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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS LAUMANN, : CIVIL ACTION NO.
 FERNANDA GARBER, : 12-CV-1817 (SAS)
 ROBERT SILVER, :
 GARRETT TRAUB, :
 DAVID DILLON, and :
 PETER HERMAN, :
 representing :
 themselves and :
 all others :
 similarly :
 situated, :
 Plaintiffs, :
 v. :
 NATIONAL HOCKEY :
 LEAGUE, ET AL., :
 Defendants. :

- - -
 December 19, 2013
 - - -

Highly confidential video-taped
 deposition of GARY BETTMAN, held at
 Pomerantz Grossman Hufford Dahlstrom &
 Gross, LLP, 600 Third Avenue, New York,
 NY, 10016, at 9:31 a.m., before Nicole
 Alessi, Certified Professional Reporter.

- - -
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THE VIDEOGRAPHER: We are on the record. My name is Phillip Roller. I'm a videographer retained by On the Record Legal Video. This is a video deposition for the United States District Court, Southern District of New York. Today's date is December 19, 2013, the video time is 9:31 a.m. This deposition is being held at 600 Third Avenue on the 20th floor, New York, New York, in the matter of Thomas Laumann, et al, vs. The National Hockey League, et al.

The deponent is Gary Bettman. Would all counsel please identify themselves.

MR. OIVER: Ned Diver for the plaintiffs, Langer, Grogan and Diver.

MR. KURTZ: Adam Kurtz for the plaintiffs, Pomerantz, LLP.

MS. BROWN: Deborah Brown from Quinn Emanuel on behalf of Defendants Madison Square Garden and Rangers.

MR. MALDIN: James Maldin with Davis Polk and Wardwell on behalf of the

8

Comcast defendants.

MR. KARASIK: Lou Karasik, Alston and Bird, on behalf of DirectTV defendants.

MR. KEYTE: James Keyte, Skadden Arps, for the NHL defendants except MSG.

MR. MARTINO: Matt Martino from Skadden for the NHL defendants except MSG.

MR. GOLDFEIN: I'm Shep Goldfein from Skadden for the NHL defendants except for MSG, and for the commissioner.

THE VIDEOGRAPHER: The court reporter is Nicole Alessi and will now swear in the witness.

GARY BETTMAN, having been duly sworn was examined and testified as follows:

EXAMINATION

BY MR. DIVER:

Q. Good morning, Mr. Bettman.

A. Good morning.

Q. Now, tell me, you're an

9

1 attorney, correct?

2 A. By training.

3 Q. By training. Have you been

4 deposed before?

5 A. Yes.

6 Q. How many times about?

7 A. I don't have an exact count.

8 It's been more than a couple.

9 Q. Have you taken depositions?

10 A. In my former life.

11 Q. So you understand the drill here

12 and we don't have to go through a lot of

13 the introductory --

14 A. If I have any questions as we

15 proceed I will be not hesitant at all to

16 ask you.

17 Q. Okay. Now, what is your

18 educational background?

19 A. I have a Bachelor's of Science

20 from Cornell University in industrial and

21 labor relations. And I have a JD from

22 NYU School of Law.

23 Q. And as part of your industrial

24 labor relations' degree did you study

25 economics?

10

1 A. A little bit.

2 Q. Were there requirements to take

3 courses from the economics' department?

4 A. It's been a while but I believe

5 there were at least a couple of eco

6 requirements.

7 Q. You don't -- you don't think of

8 yourself as an economist?

9 A. Well, in -- in terms of the

10 expertise as to the credentials that some

11 of your expert economists will have, no;

12 but as a lay person my guess is I'm

13 probably a little bit better informed

14 than most on economic issues.

15 Q. Do you have any specific

16 training in antitrust law?

17 A. What do you mean by specific

18 training?

19 Q. In terms of your law school

20 education.

21 A. I don't remember if I took

22 antitrust law, but I'm not sure that you

23 could be at a professional sports league

24 for the last 32 years like I have been

25 without having at least some fleeting

11

1 familiarity with the antitrust issues.

2 Q. Now, tell me about your

3 employment background after law school.

4 A. I was at the law firm of

5 Proskauer, Rose, Goetz and Mendelsohn, as

6 it was then called, for about three

7 years. I was at the firm in New Jersey

8 called Gutkin, Miller and a bunch of

9 other names for about a year. I was then

10 assistant general counsel at the NBA,

11 excuse me, for a couple years, and I

12 ultimately became general counsel, senior

13 vice president and general counsel. And

14 I was there until January -- the end of

15 January 1993 when I left the NBA to

16 become the commissioner of the NHL on

17 February 1st, 1993.

18 Q. Now, just to place this, when

19 did you graduate from law school?

20 A. '77.

21 Q. When did you join the NBA?

22 A. '91 -- '81.

23 Q. 1981?

24 A. 1981. So I was there for about

25 12 years.

12

1 Q. And at what point did you become

2 the general counsel at the NBA?

3 A. It was probably, I don't

4 remember the exact date, but I think it

5 was within a year of the time that David

6 Stern elevated to commissioner. So it

7 probably would've been late '83, early

8 '84 ballpark. I could be a little off

9 but somewhere in that timeframe.

10 Q. And Mr. Stern just celebrated an

11 anniversary of sorts, does that --

12 A. Actually, I think February 1st

13 will be the anniversary 30 years. And

14 he's celebrating it by retiring.

15 Q. When you were at the NBA did you

16 work on broadcast policy issues?

17 A. Yes.

18 Q. Did you address territorial

19 exclusivities as part of that work?

20 A. I'm not sure --

21 MR. GOLDFEIN: Object to the

22 form of the question.

23 THE WITNESS: I'm not sure if --

24 I think the question is a little broad.

25 Are you talking about local or

13

1 national? Are you talking about
 2 contractual negotiations? Are you
 3 talking about league rules and policies?
 4 I'd -- I would like to answer the
 5 question but I'm not sure exactly what
 6 you're asking me.
 7 BY MR. OIVER:
 8 Q. I'm -- I'm -- I'm asking
 9 particular about league rules and
 10 policies.
 11 Did you have any involvement in
 12 the creation or modification of league
 13 rules and policies --
 14 A. To the --
 15 MR. GOLDFEIN: Object to the
 16 form of the objection --
 17 MR. DIVER: -- of --
 18 MR. GOLDFEIN: -- lack of
 19 foundation.
 20 MR. DIVER: -- of broadcasting
 21 policies.
 22 THE WITNESS: To -- to the
 23 extent there were any ongoing issues or
 24 discussions I'm sure I would've been a
 25 part of them. Based on how many years

14

1 ago, unless you've got something more
 2 specifically to refresh my recollection, I
 3 don't have a specific recollection other
 4 than perhaps -- and I'm not even sure
 5 that this is responsive to your question
 6 -- the litigation the NBA had with the
 7 Bulls.
 8 BY MR. DIVER:
 9 Q. And did you -- were you
 10 involved in that litigation?
 11 A. Yes.
 12 Q. As general counsel?
 13 A. Yes, and then subsequently I
 14 think as a witness after I was
 15 commissioner at the NHL and the
 16 litigation was still ongoing.
 17 Q. Now, you said you became the
 18 Commissioner of the National Hockey
 19 League in February 1993, correct?
 20 A. Well, actually, that's when my
 21 term began. I was elected in December of
 22 '92.
 23 Q. Okay. So you were -- either
 24 have been there for 21 years or almost
 25 have been there for 21 years, depending

15

1 on which day you choose?
 2 A. We are zeroing in on 21 years,
 3 depends on how specific you want to paint
 4 the target.
 5 Q. Now, this was your first
 6 position with the National Hockey League?
 7 A. Yes.
 8 Q. Had you ever done any
 9 professional work involving professional
 10 hockey prior to taking that job?
 11 MR. GOLDFEIN: Object to the
 12 form of the question.
 13 I -- I don't -- when you say
 14 professional work, Ned, do you mean legal
 15 work?
 16 MR. DIVER: Start with legal
 17 work.
 18 MR. GOLDFEIN: I want to
 19 understand because there may be
 20 privileges issues.
 21 BY MR. DIVER:
 22 Q. Did you have any experience
 23 working in legal or otherwise?
 24 A. Well, not that I recall. The --
 25 when I was at the NBA in-house I don't

16

1 believe I would have been doing anything
 2 to represent the National Hockey League.
 3 Is it conceivable at Proskauer I may have
 4 done something, it's possible, but I
 5 don't recall. There were, you know,
 6 things that we might do in common with
 7 the NHL when I was with the NBA. So for
 8 example, when we were involved, and all
 9 the sports leagues were, on anti gambling
 10 lobbying for legislation to prohibit
 11 sports betting, those are things we
 12 would've worked together on. But I don't
 13 have any recollection prior to being at
 14 the NHL having worked for or representing
 15 the NHL.
 16 Q. Do you recall having ever worked
 17 together with any other leagues on any
 18 matters involving broadcasting?
 19 A. The only matters that -- that I
 20 think we, that I recall, we would do is
 21 has to do with the Copyright Royalty
 22 Tribunal and when the joint sports'
 23 claimants would be putting in their
 24 claims for the royalties that we were
 25 entitled to as a group, but beyond that,

17

1 when it comes to negotiating our own
2 national contracts we tend to do that on
3 our own because obviously we're
4 competitors.
5 Q. Now, I -- I just want to
6 clarify. Before you became the
7 commissioner, Mr. Stein was the president
8 of the league. Is that correct?
9 A. For -- for a period of time,
10 yes. He -- he was, I believe, installed
11 on interim basis -- basis to replace John
12 Ziegler.
13 Q. And -- and -- and you -- now,
14 was Mr. Stein at the -- at the NHL when
15 you started? Did you overlap in any way?
16 A. Yes, we did. He -- he was -- he
17 was -- he was president, interim or
18 otherwise, I was elected commissioner but
19 as to I think a technical matter, as of
20 the June following my ascension, I -- I
21 was going to be commissioner and
22 president and he was going to be leaving.
23 Q. I see.
24 A. So I think we allowed him, the
25 governors and I, agreed that he would

18

1 continue on as president to the end of
2 the then current season.
3 Q. I see. And there has not been
4 another president since that time?
5 A. Correct.
6 Q. Are you currently the president?
7 A. I'm not -- I'm -- maybe or maybe
8 the position doesn't exist. I'm -- I'm
9 not sure, but I'm -- I'm, you know -- I'm
10 the commissioner. I'm the CEO. If there
11 is a president it's me, but I'm not even
12 sure that we -- I don't -- I don't think
13 the constitution and bylaws reflect that
14 position anymore. In fact, if -- if I
15 recall correctly, in June of '93 the
16 constitution was amended to revamp the
17 title to create the office of the
18 commissioner because there hadn't been a
19 commissioner before me. And my
20 recollection is we wiped out the
21 presidency at that point in time.
22 Q. Now, was -- was there any
23 substantive change in the role at the
24 time this was -- was created, or was this
25 a renaming of a CEO position?

19

1 A. I think the intention was to
2 make the position a little bit broader,
3 to make it more consistent with the
4 commissioners in the general sense of
5 basketball, football and baseball.
6 Again, you know, we -- we revised and
7 updated the constitution. As a practical
8 matter, I'm not sure there was a
9 difference because I wasn't here. So I
10 can't exactly tell you how the president
11 was functioning prior to the time I got
12 there.
13 Q. Now, how -- how was the
14 commissioner chosen?
15 A. He is selected/elected by the
16 Board of Governors. It requires a three
17 -- three-quarter vote, I believe.
18 Q. Is --
19 A. Three-quarter or majority. I'm
20 not even sure it's been so long.
21 Q. Okay, yeah. And -- and can you
22 explain what the Board of Governors is?
23 A. The -- we -- we are a -- a
24 partnership, a joint venture. We have 30
25 members and each member, member/club, has

20

1 a governor. There are alternate
2 governors as well, but there's governors.
3 So it's kind of like in traditional
4 corporate terms a board of directors, and
5 each club has an equal vote. And so
6 there are 30 clubs, each club has a
7 1/30th vote and the constitution and
8 bylaws specify which things are done by
9 majority vote and which require a super
10 majority. And I report to the Board of
11 Governors of this partnership, slash,
12 joint venture.
13 Q. But each governor represents a
14 single club?
15 A. Each governor is appointed on
16 behalf of a single club, but each is one
17 of 30 in terms of the governance of this
18 joint venture.
19 Q. Now, can you explain what the
20 duties of the commissioner are?
21 MR. GOLDFEIN: Object to the
22 form of the question.
23 THE WITNESS: I mean, I think if
24 you look at the constitution article six,
25 it lays out all of the duties. You know,

21

1 as -- as an offhanded matter, the fact is
 2 I'm in charge of running the league on a
 3 day-to-day basis, subject to the advice
 4 and consent as appropriate of the Board
 5 of Governors. We -- we hire and fire and
 6 schedule the officials. We negotiate
 7 league-wide agreements whether or not
 8 they're collective-bargaining agreements
 9 either with the Players' Association or
 10 the Officials Union. We negotiate
 11 league-wide contracts whether it's
 12 through NHL Enterprises for advertising
 13 and sponsorship and licensing. We
 14 negotiate national television agreements.
 15 We enforce league rules and -- I don't
 16 know, you need more than that? That's
 17 the thumbnail.
 18 BY MR. DIVER:
 19 Q. When you say you hire and fire,
 20 you mean you hire and fire employees of
 21 the league --
 22 A. I was talking about --
 23 Q. -- and league entities --
 24 A. -- yes, but also the officials.
 25 Q. And the officials.

22

1 A. The -- the ones that officiate
 2 the games.
 3 Q. Who -- who are the --
 4 A. And we do the league schedule as
 5 well.
 6 Q. But you don't hire and fire
 7 employees of individual clubs?
 8 A. No.
 9 Q. You have -- you have no say in
 10 that?
 11 A. Occasionally we discipline them
 12 but we don't hire and fire them.
 13 Q. Now, who -- who makes the on-ice
 14 rules?
 15 MR. GOLDFEIN: Object to the
 16 form of the question.
 17 THE WITNESS: Do you mean --
 18 MR. GOLDFEIN: It's --
 19 BY MR. DIVER:
 20 Q. Do you have a role in the making
 21 of on-ice rules?
 22 MR. GOLDFEIN: Again, I'll
 23 object to the form of the question.
 24 THE WITNESS: Let me try to
 25 answer what I think you're asking because

23

1 I'm not sure the question is targeted
 2 right.
 3 There -- there are a body --
 4 you're talking about the playing rules, I
 5 assume?
 6 BY MR. DIVER:
 7 Q. Um-hmm.
 8 A. There are a body of rules
 9 contained in the rule book. To amend the
 10 rules or change them requires two-thirds
 11 vote of the Board of Governors. We have
 12 a series of processes that we go through
 13 which include general managers reviewing
 14 possible rule changes. We have a
 15 competition committee under the
 16 collective-bargaining agreement, under
 17 which a committee of managers with an
 18 owner and players get together and talk
 19 about rule changes as well and they're
 20 involved in the process.
 21 I'm involved in all of those
 22 meetings. Do I actually have a vote on
 23 rules, unless I'm actually sitting on the
 24 competition committee, I don't have a
 25 vote. It's really the Board of Governors

24

1 that vote for the rule changes or not.
 2 And that, again, they do by a two-thirds
 3 vote. It's one of those things because
 4 if it's important it requires a super
 5 majority. And, by the way, if you try to
 6 change a rule in the middle of the season
 7 for that season it requires a unanimous
 8 vote. So you don't see that very often.
 9 Q. I see. I see. Now, is --
 10 changes to bylaws, again, that is
 11 something that's done by the Board of
 12 Governors?
 13 A. That's correct.
 14 Q. And you don't have a vote in
 15 that?
 16 A. No, I don't.
 17 Q. And --
 18 A. By the way, among my other
 19 duties I chair the meetings with the
 20 Board of Governors. So as the list of
 21 things that I do, that's probably one
 22 that I left out that I should've
 23 included.
 24 Q. I see. And the same for
 25 constitutional changes?

25

1 A. Correct.

2 Q. Now, do you have a role in

3 interpreting the rules?

4 A. Yes, I do.

5 Q. Do you issue formal

6 interpretations?

7 MR. GOLDFEIN: I'm -- I'm gonna

8 object. I'm sorry. I'm going to object

9 to the form of the question because when

10 you talk about the rules, are you talking

11 about the playing rules?

12 MR. DIVER: Well, he was about

13 to answer it.

14 THE WITNESS: Well, I was about

15 to say that, yes, but, the fact of the

16 matter is if -- if as a practical matter

17 the officials on the ice interpret the

18 rules. But, yes, I -- I am responsible

19 for interpreting rules, for resolving

20 disputes between clubs. I'm responsible

21 for interpreting the constitution of

22 bylaws and other resolutions as they may

23 be applied. So that is within my duties

24 as well. But as I said, if you wanted

25 the comprehensive list I would refer you

26

1 to article six of the constitution.

2 BY MR. DIVER:

3 Q. And -- and have you, in fact,

4 issued formal interpretations of bylaws

5 and constitutional provisions?

6 A. I suppose from time to time,

7 either directly or because there's a

8 dispute that needs to be resolved, which

9 by implication would require me to

10 interpret something.

11 Q. Now, your -- can your duties be

12 changed by the Board of Governors?

13 A. Yeah, they can, I suppose. We

14 -- we -- I have not seen that. Whether

15 or not that would be a breach of my

16 contract is something I've never focused

17 on. But I -- I believe that the board

18 has the authority on a macro basis to do

19 that.

20 Q. And it's the board who decides

21 whether to keep you on?

22 A. Yes. Well, what typically

23 happens is I have a term and then they

24 decide to extend it, which they --

25 they've done a number of times. That's

27

1 how we got or get to 21.

2 Q. Okay. Now, I want to talk about

3 the -- the league itself now.

4 The National Hockey League is an

5 unincorporated association --

6 A. Correct.

7 Q. -- is that correct?

8 And it is not for profit; is

9 that correct?

10 A. Well, as -- as a structural and

11 tax matter it's set up that way so that

12 there aren't multiple layers of tax. The

13 NHL as such is really a pass-through

14 economic link to the clubs that

15 constitute the joint venture.

16 Q. I see. So when it's -- it's an

17 unincorporated association of the clubs?

18 A. Yes.

19 Q. And so if the -- if the league

20 obtains profits those are passed --

21 A. They're -- they're really the

22 clubs' profits.

23 Q. And the clubs are for-profit

24 entities?

25 A. Theoretically. They try --

28

1 Q. And --

2 A. -- they try to be sometimes with

3 not a level of success that would make

4 all of them more else happy.

5 Q. But -- but -- but -- but that is

6 their aim to earn a profit?

7 A. And to win the Stanley Cup.

8 Q. And to win the Stanley Cup.

9 Now, you said there are 30

10 clubs?

11 A. Presently.

12 Q. And -- and -- and there are --

13 and each club has an equal say, correct,

14 on the Board of Governors?

15 A. Each -- each club is entitled to

16 a representative who sits on the board

17 and they -- each club is entitled to one

18 vote out of the 30.

19 Q. Okay. How many of those clubs

20 are in the United States currently?

21 A. Twenty-three.

22 Q. How many clubs were there in the

23 league when you started as commissioner?

24 A. Well, there -- there were 24

25 although the day before I was elected

29

1 commissioner the board had a vote to
 2 expand to south Florida and Anaheim. So
 3 those teams hadn't started playing yet
 4 but they were voted in to be the 25th and
 5 26th teams.
 6 Q. And you said that was the day
 7 before what, the day before you were?
 8 A. Elected.
 9 Q. Elected. So the day before --
 10 A. It was.
 11 Q. -- December?
 12 A. It was -- maybe it was December
 13 6th, 7th, somewhere around then, 1992.
 14 Q. Did you have any input on that
 15 expansion?
 16 A. No.
 17 Q. And it has expanded from the 26?
 18 A. To 30.
 19 Q. To 30?
 20 A. Yes. We went through a phase of
 21 four expansions in the late nineties.
 22 - - -
 23 (Peter Leckman joined the
 24 conference room.)
 25 - - -

30

1 BY MR. DIVER:
 2 Q. And why was the NHL expanded?
 3 A. As a general matter of, you
 4 expand when there's increase interest in
 5 having NHL hockey in a particular locale
 6 and there's somebody who wants to own a
 7 team and there's a facility that's
 8 suitable and you conclude that the market
 9 can hopefully support the franchise.
 10 Can we introduce our new friend?
 11 MR. LECKMAN: Oh, sorry. Peter
 12 Leckman. I work with Ned Diver.
 13 THE WITNESS: Oh, welcome.
 14 MR. LECKMAN: I apologize for
 15 being late.
 16 THE WITNESS: No, no. That's
 17 quite all right. I just -- I wanted to
 18 make sure somebody here knew you.
 19 BY MR. DIVER:
 20 Q. Now, are there currently people
 21 who have interest in -- in starting new
 22 NHL clubs who have expressed interest to
 23 you?
 24 MR. GOLDFEIN: We're -- this is
 25 sensitive business information and

31

1 outside the scope of the case. So, he
 2 can answer yes or no but I am going to
 3 limit what he -- what he's going to
 4 testify in this area to. So you can ask
 5 your questions. We will see how far
 6 we'll allow you to go.
 7 MR. DIVER: I -- I don't
 8 understand why -- I mean, this is
 9 obviously a confidential area and you're
 10 entitled to mark it as highly
 11 confidential.
 12 MR. GOLDFEIN: Well, we are
 13 going to mark the deposition as highly
 14 confidential, but nonetheless it's -- the
 15 judge's rule say things which are clearly
 16 irrelevant are not proper subject for
 17 inquiry.
 18 THE WITNESS: Without opining on
 19 the relevance, which I'll leave to my
 20 counsel, I'm certainly happy to tell you
 21 that which I've said publically. Namely,
 22 we've received expressions of interest
 23 from a number of different people and
 24 places.
 25 BY MR. DIVER:

32

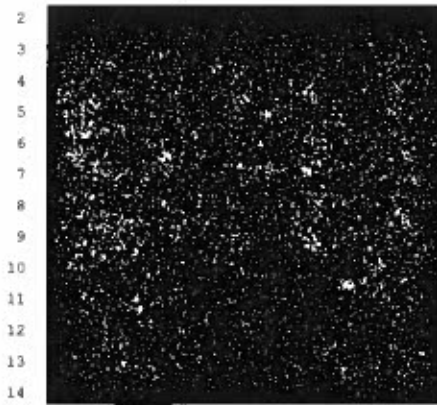
1 Q. Now, are there currently cities
 2 that you think would be, as you've
 3 described, I -- I'm not sure exactly the
 4 wording you used, markets that could
 5 support a National Hockey League team?



25 MR. GOLDFEIN: Object to the

33

1 form of the question.



15 BY MR. DIVER:

16 Q. Did you do any preliminary plan
17 B type analysis?



25 Q. Now, is there any reason that

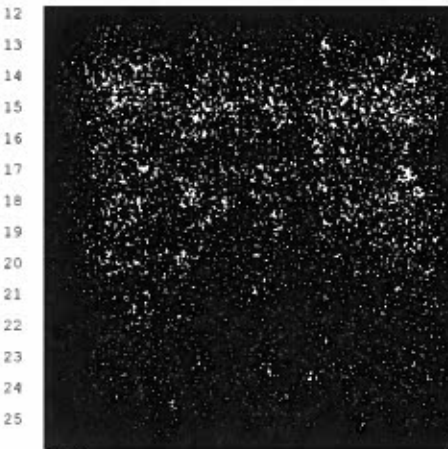
34

1 you know of -- and I don't -- I don't
2 want to -- this is not -- I'm not trying
3 to figure out their future plans here,
4 but this is relevant to the economics of
5 this case so I -- I --

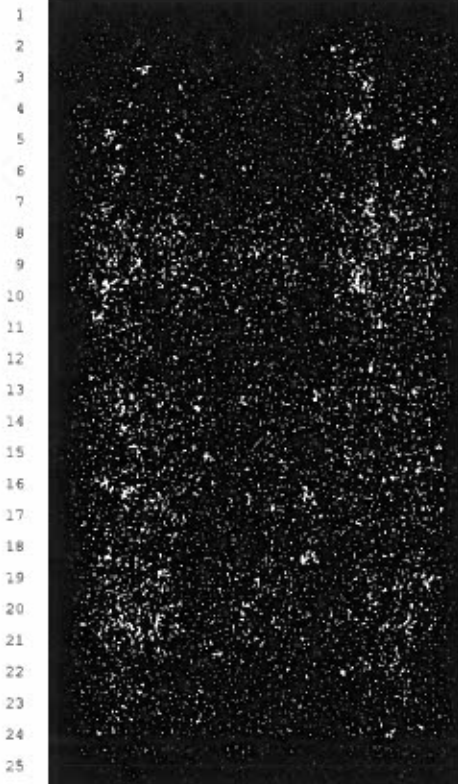
6 MR. GOLDFEIN: If you can
7 articulate the relevance then perhaps
8 I'll have a better understanding --

9 MR. DIVER: Well -- well, we'll
10 see.

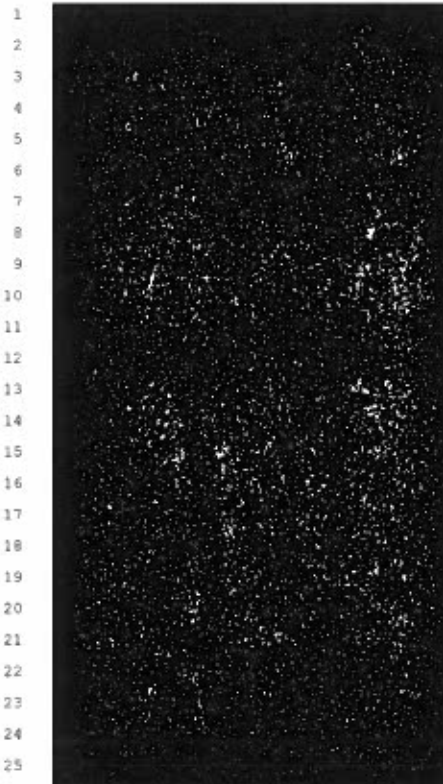
11 BY MR. DIVER:



35



36



37

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. Now, how do you determine what
 8 the right number of teams is for the
 9 National Hockey League?
 10 A. Like -- like so many things that
 11 we have to do, not just on the ice but
 12 off the ice, you have to make business
 13 judgment. The board has to make a
 14 business judgment. If -- if your teams
 15 are doing well, if -- if you think
 16 there's enough talent. If you think
 17 there's enough interest, and then as you
 18 get more market specific you look at
 19 three vital criteria. One is whether or
 20 not there's a suitable arena. Two,
 21 whether or not you think the market can
 22 sustain a franchise. And three, who the
 23 ownership is. An ownership is -- is --
 24 is a multi-prime analysis. It's somebody
 25 obviously has to have the financial

38

1 wherewithal to support a franchise, but
 2 you also want to be comfortable. And
 3 this is, again, not my decision this is a
 4 decision the board makes. Is the owner
 5 somebody who you think would be a good
 6 partner in the joint venture?
 7 Q. Now, has the league determined
 8 that 30 is the right number of -- of
 9 teams for the NHL?
 10 A. Well, 30 is the number. And
 11 that's what we're living with. So there
 12 isn't a consensus to change the status
 13 quo one way or the other.
 14 Q. Now, have they conducted any
 15 analysis of the economic effect of having
 16 32 teams or 28 teams?
 17 A. No.
 18 Q. No.
 19 A. The only -- the -- when you say
 20 analysis, to be perfectly accurate, and I
 21 am not sure that I would call this an
 22 analysis, [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

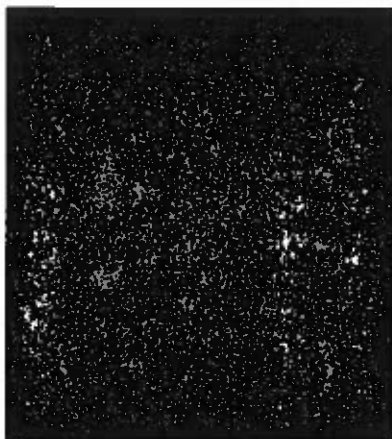
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 24 [REDACTED]
 25 [REDACTED]

41



Q. And -- and why not?

A. Because part of what we think makes a sports leagues strong and interesting is the integrity of the competition. You know, while -- while we're joint venturists from a business standpoint, the fact is on the ice when it comes to winning, making the playoffs, winning the Stanley Cup, that's where the competition comes in. And -- and leaving teams in that regard to their own devices

42

Within the rules to try and compete and win is what makes our season interesting and exciting and entertaining.

Q. And you don't think that combining the clubs as -- as a business matter would allow you to preserve that?

A. Well, we do combine the clubs as a business matter. We're a lawful joint venture and we do lots of things together. I think as the time and -- and the law continues to evolve on this, you know, viewing this as -- as a simple undisputable, undisputable by others, single entity might make life a little bit easier. We think it's a practical matter. We really are because we are a lawful joint venture, but the structure we have now is the one that we think makes the most sense.

Q. And what is the benefit of having a team separately owned and getting separate profits and -- and separate losses?

A. As -- as I said --

MR. GOLDFEIN: Object to the

43

form of the question.

It's asked and answered.

THE WITNESS: I did, but I'll do it again. If -- if it -- if -- as I said, from a business standpoint we are a lawful joint venture and, in fact, conducting the league and the league's business is something that no one team can do alone, okay. You -- if you are -- to pick a club, the New York Rangers, you need other teams to play against. You need a league schedule, you need an integrity of -- of the season and the rules.

The fact is, having competition on the ice, you know, whose got the best coach, who puts the best player chemistry out there, who has the best strategies. That's how you determine who's going to win and that's what we gauge as fans.

From a business standpoint we've tried to create the right balance between what the clubs are best able to -- to -- to exploit from a business standpoint in their local areas and what we need to do

44

nationally so that we can be an effective competitor in the sports and entertainment marketplace.

BY MR. DIVER:

Q. Now, turn -- turning to that issue. The league enters into agreements for national broadcasting games, correct?

A. Yes.

Q. And they do so both in the United States and Canada, correct?

A. Yes.

Q. Now, when you began as commissioner did the NHL have national broadcasting contracts?

A. Modestly.

Q. And -- and -- and with whom did they have --

A. There was there was on --

Q. -- those contracts?

A. There -- well, initially, there was an agreement in the United States with ESPN. There was no over-the-air arrangement, it was a cable deal. And in Canada, I believe the structure of the deal when I took over was the league had

45

1 sold its rights to Molson. And Molson
 2 then sublicensed to the CBC for Hockey
 3 Night in Canada.
 4 Q. And Hockey Night in Canada at
 5 that time was the only national broadcast
 6 in Canada?
 7 A. I'm trying to -- TSN was
 8 probably in business as well, the cable
 9 -- Canada's equivalent to ESPN, which, in
 10 fact, ESPN I think owns a third of.
 11 Q. Now, focusing on the United
 12 States far now, do you recall about how
 13 many games were broadcast on ESPN?
 14 A. Well, a couple of games a week.
 15 They -- they went to more when ESPN-2
 16 started. It -- it was -- it was an
 17 agreement that had been entered into I
 18 think a year or so before I got to the
 19 league. The league had been on Sports
 20 Channel America and basically had no
 21 national exposure because I don't even
 22 think Sports Channel America was in six
 23 million homes. And they went to ESPN a
 24 game of the week, maybe more. And then
 25 they were on ESPN-2 limitlessly. In

46

1 facts, ESPN-2 was built on the NHL's
 2 back, but it -- it was a restricted
 3 contract because, if I remember
 4 correctly, in the 1994 Stanley Cup final,
 5 when the Rangers were playing Vancouver,
 6 the game was actually blacked out in New
 7 York on ESPN so that it could be carried
 8 on the MSG Network.
 9 Q. Now, when you became the
 10 commissioner did you make it a priority
 11 to increase the number of nationally
 12 televised NHL games?
 13 A. It was one of the things I was
 14 extraordinarily concerned about. And I
 15 believed that if the league had any
 16 future, we needed greater national
 17 exposure. We needed greater national
 18 coverage on platforms that we weren't on
 19 because if, to give you an example, there
 20 were people who were not able to watch
 21 NHL hockey like even in the playoffs,
 22 historically. And we needed greater
 23 exposure. Because if you looked at who
 24 we were competing with, whether or not it
 25 was the NFL, the NBA, or Major League

47

1 Baseball, they all had more extensive
 2 national coverage than we did. And
 3 finding a niche, finding a place in the
 4 schedule, finding a platform that we
 5 could be carried on wasn't so easy.
 6 Q. Now, why was it so important to
 7 the league to -- to be on national TV
 8 particularly?
 9 A. Because your status as a
 10 national sport is severely compromised if
 11 you don't have a national platform.
 12 Q. Why is that?
 13 A. Because you're not getting the
 14 national attention, coverage, prominence.
 15 It's as much as it is exposure it's also
 16 branding. If -- if -- if you're a major
 17 league sport you need major league
 18 coverage. I mean, look -- look at the
 19 coverage the NFL gets. I mean, nobody in
 20 sports, or entertainment for that matter,
 21 gets that level of coverage. That's
 22 what's helped make them as strong as they
 23 are.
 24 Q. Now, you -- you've mentioned
 25 branding, exposure, promotion. Am -- am

48

1 I correct to say that the primary reason
 2 is -- is that kind of professional aspect
 3 of -- of the coverage, not because it's
 4 in and of itself so lucrative?
 5 A. Well, it wasn't lucrative for us
 6 relative to the other sports. I mean, a
 7 good example if you -- if you look at
 8 what Major League Soccer is going
 9 through. They don't have major national
 10 exposure and that's helping keep them
 11 from the next level. It's -- it's --
 12 what you're trying to do is isolate one
 13 factor as we're going through this
 14 analysis, and it's a whole series of
 15 things that -- that determine what you
 16 need to do. It's -- it's a balancing
 17 act.
 18 Q. Now, I would like to -- before I
 19 got to this document I want -- I want to
 20 move this discussion a little bit from --
 21 from the 1990s into the 21st Century.
 22 A. That's quite a leap.
 23 Q. Now, since the last, I want to
 24 say last lockout but it's not the last
 25 lockout, since the 2004-05 lockout, what

49

1 have the leagues' national contracts in
2 the United States, who have they been
3 with?

4 MR. GOLDFEIN: Object to the
5 form of the question.

6 THE WITNESS: Well, when coming
7 out of two lockouts ago, we had -- going
8 into the lockout we didn't have an
9 over-the-air deal. And I believe we had
10 made a deal with NBC on a profit sharing,
11 no rights get -- guarantee basis for the
12 exposure. And ESPN going into the
13 lockout had an option because of the
14 lockout in the last season, to extend us
15 either for a year or two, and I think
16 \$60 million. When we came out of the
17 lockout, ESPN declined to exercise the
18 option. They said they wanted to -- us
19 to take less, and we declined that
20 invitation. I then made a deal, an
21 agreement, with what was then OLN, the
22 Outdoor Life Network which was owned by
23 Comcast, which then morphed into Versus
24 and those agreements basically ran side
25 by side, the NBC sharing agreement and

50

1 the Comcast ownership of them. And then
2 the OLN/Comcast agreement. And then as,
3 I won't say I was a visionary on this
4 because I wasn't, as luck would have it,
5 Comcast and NBC Universal got together
6 and we were able to two-and-a-half years
7 ago negotiate a new cable and
8 over-the-air national deal, which for us
9 was at an unprecedented level with NBC
10 SportsNet and NBC as one package. And
11 that's the deal that we currently have in
12 effect for the exposure of our game.

13 BY MR. DIVER:

14 Q. And you said that's not because
15 you were a visionary. You told Brian
16 Roberts that he had to buy NBC to do it?

17 A. We, you know, what do they say,
18 timing and luck.

19 Q. Okay.

20 A. I think I'm going to need my
21 glasses.

22 Q. Marking as Bettman Exhibit-1.

23 - - -

24 (Whereupon Bettman-1, NHL,
25 Broadcasting, U.S. TV Over the Air

51

1 Rights, NBC Summary, was marked for
2 identification.)

3 - - -

4 BY MR. DIVER:

5 Q. This is a document entitled:
6 NHL Broadcasting, U.S. TV Over the Air
7 Rights, NBC Summary.

8 The first page Bates No.
9 NHL696521. Do you recognize this
10 document?

11 A. No. I mean, I can guess as to
12 what it is. And based on the caption on
13 the bottom right hand, it probably was in
14 our budget-review process. When we get
15 our budgets approved, that's something
16 else that we present to the board for
17 league operations and that has to be
18 approved. But I don't remember in
19 particular seeing this document. I mean,
20 there's nothing on it that surprises me,
21 but, again, I'm not your best source for
22 authenticating this.

23 Q. Okay. Now, on -- on the second
24 page there's a chart, spreadsheet?

25 A. Um-hmm.

52

1 Q. Focusing on the third line from
2 the bottom.

3 A. Third line from?

4 Q. From the bottom. Net profit.
5 And this is showing the revenues, am I
6 right, from -- from fiscal year 2006,
7 2007, 2008 which might be an estimate?

8 A. Um-hmm, yes.



14 I believe we did better than this. But,
15 again, this isn't -- this isn't
16 reflective backwards. This is a
17 projection. I'm assuming -- again, I am
18 making an educated guess, which I know
19 you're not supposed to do when you're
20 having your deposition taken, but I'm
21 trying to be helpful.

22 Q. If you look at the bottom of the
23 page.

24 A. Yea.

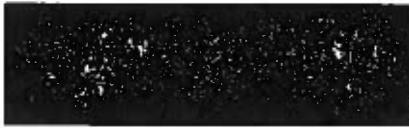
25 Q. It has a date on it.

53

1 A. That would be May 2, 2007, which
 2 is about the timeline that we do our
 3 budgets.
 4 Q. Okay. So this would be about
 5 the end of the fiscal year for 2007,
 6 correct?
 7 A. Yeah, I guess so.
 8 Q. So it -- it would likely be a
 9 pretty accurate reflection --
 10 MR. GOLDFEIN: Objection to the
 11 form of the question.
 12 THE WITNESS: Again, I -- I
 13 don't know that.
 14 BY MR. DIVER:
 15 Q. Okay. Okay. All right. Now,
 16 did -- did the NHL make any money in the
 17 -- in the first year of its -- of its NBC
 18 broadcast contract?
 19 MR. GOLDFEIN: Object to the
 20 form of the question.
 21 THE WITNESS: I don't recall.
 22 BY MR. DIVER:
 23 Q. You don't recall.
 24 A. If -- if this is accurate then
 25 the answer is no, but I don't recall.

54

1 Maybe a vague recollection that we
 2 didn't. At some point in time, and I
 3 can't tell you what year, I know we
 4 started making money on it.
 5 Q. But you don't recall when it
 6 was?
 7 A. No, but obviously that's
 8 something that we could find out.
 9 Q. Now, if you had known when you
 10 entered into this contract with NBC which
 11 you said was a revenue-sharing
 12 arrangement?
 13 A. Yes.

14 
 15
 16
 17
 18 MR. GOLDFEIN: Object to the
 19 form of the question.
 20 It's calling for speculation.

21 
 22
 23
 24
 25

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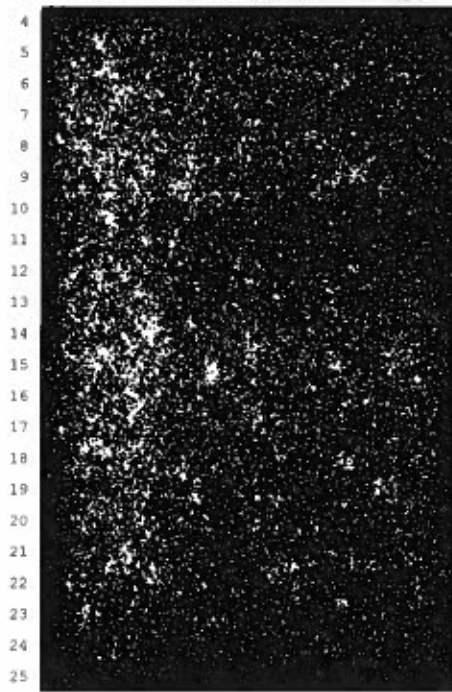
1 BY MR. DIVER:
 2 Q. It was important enough to
 3 provide the content for free?
 4 MR. GOLDFEIN: Object to the
 5 form of the question.
 6 THE WITNESS: Well, I'm not
 7 sure --
 8 MR. GOLDFEIN: That's a
 9 mischaracterization of the document, the
 10 record.
 11 THE WITNESS: Well, it's also a
 12 mischaracterization of -- of the facts of
 13 being when you say for free. Obviously,
 14 getting promotion from the NBC Network
 15 and having games on a national platform
 16 that made us look like a major league
 17 sport was important. You know, that's
 18 why people pay \$4 million for a 30 second
 19 advertisement on the Super Bowl. They
 20 think it's important to have that level
 21 of exposure on that kind of platform.
 22 BY MR. DIVER:
 23 Q. Now, you mentioned the current
 24 arrangement with NBC and it's NBC
 25 Universal, the -- the current contract?

56

1 MR. GOLDFEIN: Object to the
 2 form of the question.
 3 THE WITNESS: I think
 4 technically it's with NBC Sports.
 5 BY MR. DIVER:
 6 Q. NBC Sports.
 7 A. Which is a division of NBC
 8 Universal.
 9 Q. And about how many games are
 10 shown on -- on the channels that carry
 11 the games pursuant to this contract?
 12 MR. GOLDFEIN: Object to the
 13 form of the question as compound.
 14 THE WITNESS: I don't know the
 15 exact count off -- off the top of my
 16 head. My guess is it's somewhere between
 17 the network, and when I say the network I
 18 am talking about NBC Broadcast and NBC
 19 Sports Network cable, somewhere
 20 approaching 100, maybe 80 to a hundred
 21 would be my guess.
 22 BY MR. DIVER:
 23 Q. In any event, that's a
 24 substantial increase over prior
 25 contracts?

57

1 A. Well, it's been gradually
2 increasing. Substantial is your term.
3 The numbers are the numbers.

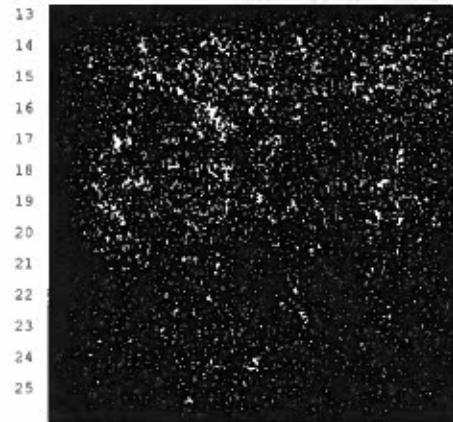


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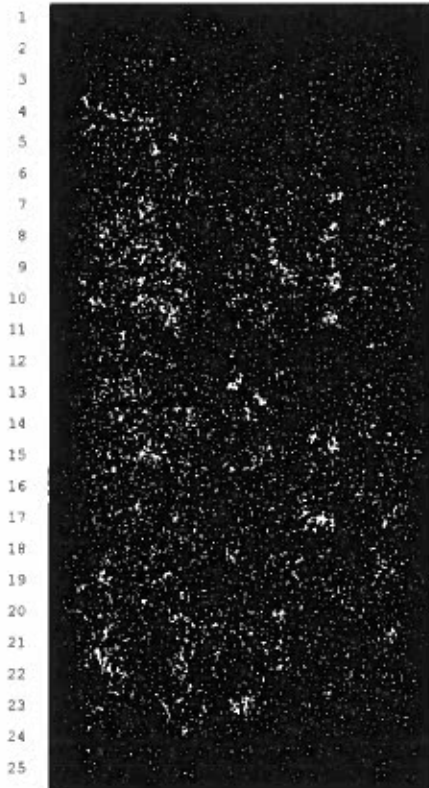


6 Q. Now, before I go on, tell me how
7 blackouts are handled on first the
8 network? If a game is on the network is
9 it shown on any local television
10 carriers?

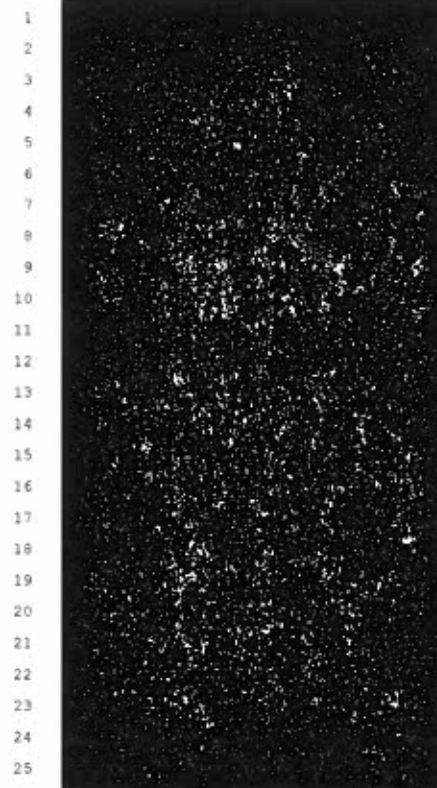
11 MR. GOLDFEIN: Object to the
12 form of the question.



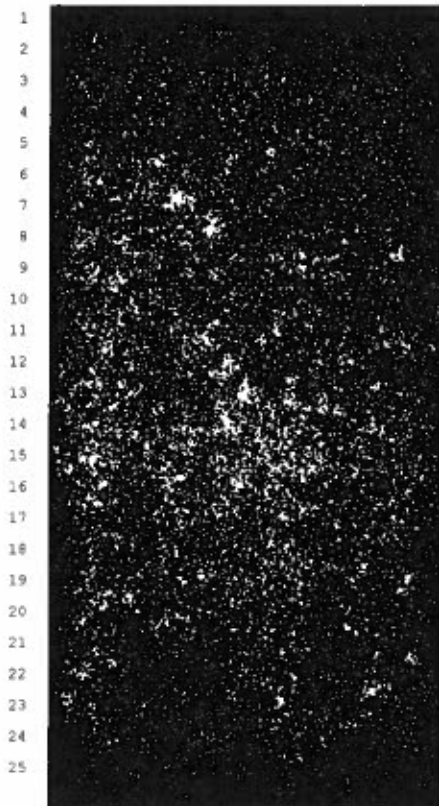
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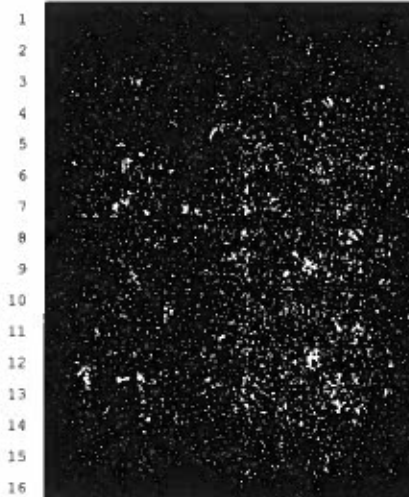
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61



62



17 Q. Now, what is the NHL Network?
 18 A. It's a cable channel.
 19 Q. Who owns it?
 20 A. Actually, there are to be
 21 precise two NHL Networks. There's one in
 22 Canada and there's one in the U.S. and
 23 their programming is largely overlapping
 24 but not identical, the choice of games is
 25 different. In Canada, our partner is we

63

1 own the majority, we being the NHL on
 2 behalf of the member clubs, and our
 3 partners are TSN, Bell Media and Insight,
 4 which is as programming entity up there.
 5 In the U.S. Insight and Bell
 6 have a piece of the U.S. network but so
 7 does Comcast and so does DirectTV, and so
 8 does Dish, I think. And most of that
 9 companionship has to do with getting
 10 carriage.
 11 Q. So you -- you've given them some
 12 equity in the station as part of your
 13 deal to --
 14 A. In order --
 15 Q. -- obtain carriage?
 16 A. -- to -- yeah. And we haven't
 17 been overwhelmingly successful because
 18 we're probably in about 43 million homes,
 19 44. We haven't been able to crack the
 20 code in getting carriage on all of the
 21 distributors that we want, you know.
 22 Some -- some have us on a pay tier which
 23 means we're less widely carried. So for
 24 example, Time Warner and Cable Vision
 25 have us on a pay tier so instead of being

64

1 in 16 million homes like we are on the
 2 Comcast system or DirectTV each, we are in
 3 hundreds of thousands. And that's
 4 something we've been trying to work hard
 5 on, but it's difficult. It's a very
 6 tough, competitive environment out there.
 7 Q. And when you say 43 million,
 8 just to --
 9 A. That's the number of homes we're
 10 available in.
 11 Q. That's the number of homes who
 12 actually subscribe to a package that
 13 includes the NHL Network?
 14 A. You -- you have to go to each
 15 distributor and see how they package it.
 16 Sometimes it gets lumped in on basic,
 17 sometimes it gets lumped in on expanded
 18 basic, sometimes it's on a pay tier. And
 19 you've got to look because that's a
 20 decision --
 21 Q. Right.
 22 A. -- that's made by the
 23 distributor --
 24 Q. But if I had a cable company
 25 that required me to get -- to -- to -- to

65

1 purchase a paid sports tier to get NHL
 2 Network, and I didn't, I wouldn't be
 3 included in the 43 million?
 4 A. Using your hypothetical, make
 5 sure I have it right, is if -- if you
 6 were a distributor -- if you were Cable
 7 Vision, and you, just take it local, and
 8 -- and you wanted the NHL Network, you
 9 would have to pay a pay tier. I'm not
 10 sure whether -- what else is on that tier
 11 with it, but you wouldn't get it as part
 12 of your basic package. I'm not -- I'm
 13 not saying that's good or bad. That's
 14 not a debate for now. That was just --
 15 Q. No, I -- I'm just trying to
 16 understand because it seems to me you
 17 might also want to count the number of
 18 homes in which a consumer was able to get
 19 it by purchasing it.
 20 A. My -- my --
 21 Q. That would be your -- that's not
 22 your number?
 23 A. My number is the number of homes
 24 where you can actually turn it on, push
 25 the buttons and see it, without doing

66

1 anything else.
 2 Q. And --and do you keep track of
 3 -- of the availability number as --
 4 A. Yes.
 5 Q. -- and what's -- what's --
 6 A. It's about 43 million.
 7 Q. I mean, do you keep track of the
 8 number of homes that are -- the number of
 9 consumers for which NHL Network is
 10 carried in their area whether or not they
 11 get it?
 12 MR. GOLDFEIN: Object to the
 13 form of the question.
 14 THE WITNESS: Well, we -- we
 15 kind of have a broad sense. In other
 16 words, Cable Vision has three to four
 17 million homes, Time Warner has, I don't
 18 know, 12, 14 million homes, and we are
 19 not widely distributed. Charter, not to
 20 pick on those two, but Charter is another
 21 one that I don't think carries us all
 22 that widely. And we're not carried on
 23 the -- the -- I think Comcast has a tier
 24 more broadly distributed than the one we
 25 are on. And DirecTV has a tier that's

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1 more broadly distributed than the one
 2 we're on.
 3 BY MR. DIVER:
 4 Q. Are there any major cable
 5 companies that you know of that don't
 6 offer the NHL Network at all?
 7 A. I think AT&T doesn't anymore,
 8 you know, they're -- they're Verizon --
 9 no, no, Verizon does. Some -- the ATs --
 10 somebody just cut us out, maybe it's
 11 AT&T.
 12 Q. But broadly speaking, most pay
 13 TV --
 14 A. Well, it's not broadly speaking
 15 because if you look at the NFL Network,
 16 if you look at the NBA Network and you
 17 look at MLB's Network, they're all in far
 18 more many homes, like tens of millions
 19 more than we were.
 20 Q. Okay. Now, about how many games
 21 does the NHL Network show in the United
 22 States, live games?
 23 MR. GOLDFEIN: Object to the
 24 form.
 25 Could you repeat that or read it

68

1 back, sorry.
 2 (Court reporter read the
 3 question back.)
 4 THE WITNESS: I don't have the
 5 exact count. I'm -- I'm gonna give you
 6 an educated guess. It's somewhere in the
 7 ballpark of 60. The -- the -- the
 8 principal driving force behind the NHL
 9 Network programming is really the shows
 10 that we do on nights where -- where ball
 11 games are played and we show highlights.
 12 Okay, NHL Tonight, NHL on the Fly.
 13 BY MR. DIVER:
 14 Q. Now, if a game is blacked out on
 15 the NHL Network because it involves the
 16 local team, does the network show a
 17 different game?
 18 A. Sometimes, depends on cost.
 19 Sometimes it doesn't -- it's not most
 20 justifiable for us to do that. Sometimes
 21 we go blank, sometimes we put in other
 22 programming, you know, over-the-shoulder
 23 programming, depends on circumstance and
 24 budgeting. It's not unlimited.
 25 Q. But between the NHL Network and

69

1 the NBC contracts, by your ballpark,
 2 there's about 160 games on national
 3 television in a season?
 4 A. Yeah, that would be a good
 5 ballpark guess. And we're talking
 6 strictly U.S.
 7 Q. Right. And now the -- is the --
 8 does the NHL Network show games on the
 9 same night that NBC's showing a game on
 10 its channels?
 11 A. Well, we're talking regular
 12 season.
 13 Q. Regular season.
 14 A. During -- during the playoffs
 15 different story possibly. But, no, if
 16 NBC is we wouldn't be showing the game at
 17 the same time.
 18 Q. But between the two there would
 19 be at least one game available most
 20 nights of the week?
 21 A. Not necessarily.
 22 Q. If there were 160, I could do
 23 the math.
 24 A. Maybe. Well, some -- some days
 25 we have double headers.

70

1 Q. Now, let me turn briefly to the
 2 contract that was recently announced for
 3 Canadian broadcast.
 4 A. Okay.
 5 -- --
 6 (Whereupon, a discussion was
 7 held off the record.)
 8 -- --
 9 (Whereupon, Bettman-2, NHL.com
 10 printout, was marked for identification.)
 11 -- --
 12 BY MR. DIVER:
 13 Q. Bettman Exhibit-2 is --
 14 A. Thank you.
 15 Q. -- is something I -- I've
 16 downloaded from the NHL.com website.
 17 A. Okay.
 18 Q. Because this was recent and --
 19 and I want to understand how this
 20 contract works.
 21 A. You will -- you will, I assume,
 22 either concede or understand that there
 23 are differences between the Canadian and
 24 the U.S. television marketplace?
 25 Q. I think that there is a

71

1 difference between United States and
 2 Canada, but I also think that -- that
 3 this -- this is relevant to the case.
 4 A. I'm not disputing its relevance,
 5 I just want to make sure there's no
 6 confusion that a country of 30 million
 7 people with less television and media
 8 outlets, which happen to be government
 9 regulated, where one of the key
 10 broadcasters happens to be a public
 11 broadcaster isn't exactly the same way
 12 the U.S. marketplace functions.
 13 Q. That's --
 14 A. And we also have to deal with
 15 the fact that whatever our role and lot
 16 in life is in the United States, in
 17 Canada we are in a completely different
 18 place in terms of our strength in the
 19 marketplace. Now, with all those caveats
 20 let's go.
 21 Q. All right, sure. I -- I -- I
 22 would -- I would think that would be
 23 apparent from the -- from the dollar
 24 figures that are represented in this
 25 document.

72

1 MR. GOLDFEIN: Object to the
 2 form of the question and the commentary.
 3 THE WITNESS: I don't think that
 4 was a question, Shep.
 5 MR. GOLDFEIN: I don't think so
 6 either.
 7 MR. DIVER: I'm trying to --
 8 MR. GOLDFEIN: He's here to ask
 9 questions.
 10 BY MR. DIVER:
 11 Q. -- I'm trying to express my
 12 understanding at this point.
 13 Now, what -- first -- first of
 14 all, does -- does this expand the number
 15 of games that are available nationally in
 16 Canada?
 17 A. It -- it's -- we -- we've used a
 18 slightly different model. So the answer
 19 is probably but not necessarily in the

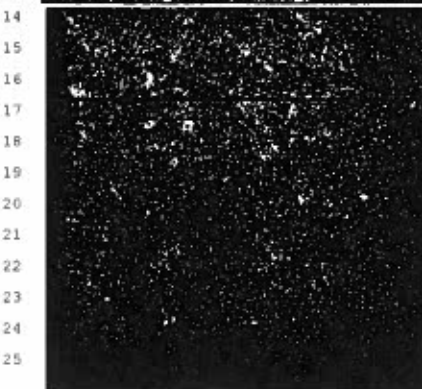


73

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] So that's one of the
 6 things that's being considered. The
 7 second is on Saturday nights, again,
 8 historically and the longest running
 9 television series I believe in the
 10 history of television is Hockey Night in
 11 Canada. It's over 60 years continuous.
 12 And it's carried on a public broadcaster
 13 whose platforms and assets are not quite
 14 as evolved as a private broadcaster, like
 15 either Bell or Rogers in Canada, or like
 16 Comcast or Time Warner and Cable Vision
 17 in the States. Historically, if you,
 18 depending on where you are on Saturday
 19 night, you would get a regionalized game.
 20 So just by way of example, if Toronto had
 21 a game on Saturday night, which they
 22 typically do for hockey night, that game
 23 would be broadcast in Ontario and
 24 probably west in the early slot. If
 25 Montreal was playing at the same time in

74

1 addition to putting that game on in
 2 French, which is a whole other different
 3 set of issues, they would likely be
 4 televised in Quebec and in the Maritimes.

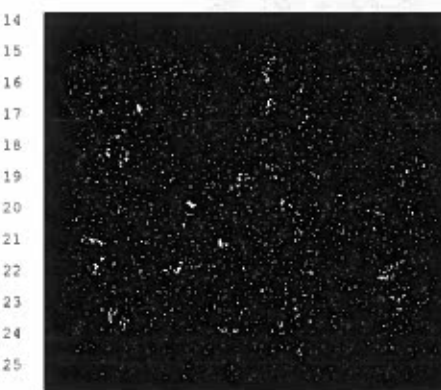


75

1 [REDACTED]
 2 [REDACTED]
 3 Q. And about how many games are --
 4 are --
 5 A. That all depends on the
 6 schedule. Saturday nights generally are
 7 a pretty busy night. Now, at the same
 8 time because it -- it -- it will probably
 9 compromise the outer market package,
 10 because you're gonna be able to get these
 11 games now. You -- you pull one thing it
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 Q. Now, first, Rodgers is what: a
 19 cable company, a television -- explain
 20 what Rodgers is.
 21 A. It's a media company.
 22 Q. It's a media company. Does it
 23 -- does it have cable?
 24 A. It -- it -- it has -- it has TV
 25 channels, cable and over the air. It has

76

1 publishing. It has mobility. It has
 2 also cable outlets.
 3 Q. So I might subscribe to Rogers
 4 cable?
 5 A. You might have a cell phone, you
 6 know, and -- yes.
 7 Q. All of those things?
 8 A. Yes. And you might buy their
 9 magazines to read.
 10 Q. But their -- their channels are
 11 not carried only on Rogers cable systems,
 12 they're carried on other cable systems?
 13 A. Yeah, that's probably true.



77

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 BY MR. DIVER:
 6 Q. Now, this document I believe
 7 talks about there being an exclusive for
 8 Rogers on -- and I will draw your
 9 attention to where I see it on the page,
 10 about the middle where it's -- the
 11 paragraph begins: The agreement also
 12 guarantees. Okay.
 13 A. Well, the -- the -- the answer
 14 on this is I don't think I've ever read
 15 this article even though it was on
 16 NHL.com. If you have questions about the
 17 agreement you're better off asking me
 18 than relying on a media report.
 19 Q. Well, I'm -- I'm -- I'm just --
 20 I'm -- I'm just -- that's what I'm trying
 21 to do.
 22 A. Okay. So then let's -- then
 23 let's ask me about the agreement.
 24 Q. Okay.
 25 A. You know, by the way, Dan Rosen

78

1 is talented, he works for us on NHL.com
 2 but it -- it's a media report so let's,
 3 you know.
 4 Q. Well, just to clarify what --
 5 what Mr. Rosen said in that first
 6 sentence. It -- he says the agreement
 7 guarantees there will be no further
 8 regionalization of games --
 9 A. That's the --
 10 Q. -- or blackouts?
 11 A. -- example I just gave you on
 12 hockey night.
 13 Q. Okay. And that -- and -- and --
 14 and by that, I -- I just as to clarify
 15 here, that means the set of games on
 16 hockey night say that Rodgers is carrying
 17 will not be blocked -- blacked out in any
 18 regions, they'll be carried nationwide --
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

79

1 lives, grandparents, the children to
 2 grandchildren sit around the TV. They've
 3 been doing it for 60 years watching
 4 Hockey Night in Canada. It is -- it is
 5 as much a cultural institution as
 6 anything else. So what we decided to do
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]


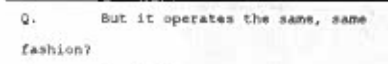
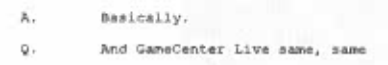



80

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 Q. Now, my -- this -- this states
 12 and my understanding is, correct me if
 13 I'm wrong, that Rodgers has exclusivity
 14 not just on Saturday night but also on
 15 Sunday and Wednesday nights --
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]



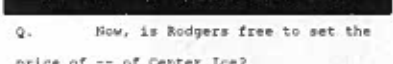





81

1 Q. So when this says: Rodgers has
 2 three exclusive windows to broadcast any
 3 game involving a Canadian team --
 4 A. Yeah, that's -- so they have
 5 Saturday night. But we -- we had the
 6 Wednesday night window on TSN which they
 7 -- now they're talking about doing Sunday
 8 night.
 9 Q. And -- and if there were two
 10 different games involving Canadian teams
 11 on Sunday nights they would both be on
 12 Rogers or --
 13 A. Or they -- or we wouldn't
 14 schedule that.
 15 Q. Or you wouldn't schedule it.
 16 But a -- but a regional sports net --
 17 A. Wouldn't be --
 18 Q. -- TSN wouldn't be --
 19 A. If we're giving them -- if you
 20 have an exclusive window as opposed to an
 21 exclusive game, then that window is
 22 protected.
 23 Q. So the RSNs just gets the other
 24 four nights of the week --
 25 A. Yeah, or --






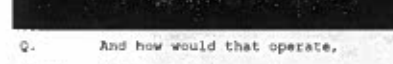










82

1 Q. -- to carry --
 2 A. -- or a different -- a different
 3 time slot. In other words, you might
 4 want to go on Sunday afternoon, or if
 5 they're doing a Sunday night game eastern
 6 seven o'clock you may be the west coast
 7 game at 10 o'clock.
 8 Q. Now, explain to me, it says that
 9 Rodgers has been granted the right to
 10 Center Ice and GameCenter Live as well?
 11 A. Correct.
 12 Q. Just quickly, Center Ice in
 13 Canada does that operate the same way as
 14 it operates in the United States?
 15 
 16 
 17 
 18 
 19 
 20 
 21 Q. But it operates the same, same
 22 fashion?
 23 A. Basically.
 24 Q. And GameCenter Live same, same
 25 way?

83

1 A. Same thing.
 2 Q. So Rodgers will operate NHL
 3 Center Ice and GameCenter Live?
 4 A. Um-hm.
 5 Q. Will they be free to sell NHL
 6 Center Ice on any terms it wants or is it
 7 constrained by --
 8 
 9 
 10 
 11 
 12 
 13 
 14 
 15 
 16
 17
 18
 19
 20
 21
 22 Q. Now, is Rodgers free to set the
 23 price of -- of Center Ice?
 24
 25

84

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 2 
 3 
 4 
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 6 
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 10 
 11 
 12 Q. And how would that operate,
 13 where -- where Rodgers --
 14 
 15 
 16 
 17 
 18 
 19
 20 Q. So if Rodgers has, what, five
 21 Canadian teams?
 22
 23
 24
 25

85

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 Q. Those teams' games that are
7 carried on -- on Rodgers SportsNet?

8 A. They could -- they could move
9 within those areas, yes.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

86

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q. Okay. Now, does this deal
5 contemplate any kind of in-market
6 streaming availability?

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 Q. Explain --

12 A. What I just said?

13 Q. -- what you just said.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

87

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

88

1 [REDACTED]
2 [REDACTED]
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5 [REDACTED]
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17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
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22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

89

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10 MR. DIVER: This is a good time
11 to take a break.
12 THE WITNESS: If you'd like.
13 The VIDEOGRAPHER: The time is
14 10:54. We are off the record.
15 - - -
16 (Whereupon, a short break was
17 held off the record.)
18 - - -
19 THE VIDEOGRAPHER: This begins
20 tape No. 2. The time is 11 o'clock. We
21 are back on the record.
22 BY MR. DIVER:
23 Q. Okay. Now, even with its
24 expansion of national broadcasting, most
25 games are still shown on local

91

1 based on the schedule and the competing
2 programming on a regional, a regional may
3 decide it's not worth it but at least one
4 feed is available on virtually every
5 game. But there are some local TV
6 contracts where I think the RSN, Regional
7 Sports Network, is only contracted for 60
8 games give or take, I'm giving you a
9 rough example. So they may not carry all
10 of the games. But if your -- but if your
11 question is are most games televised, not
12 necessarily everywhere, but there are
13 probably only a handful of games where we
14 either don't get the visiting and home
15 feed.
16 Q. And even if there are 60 games
17 televised, that's more than -- that's
18 most of the season, correct?
19 A. Yes.
20 Q. A regular season?
21 A. Well, there are 82 games in a
22 regular season.
23 Q. Right. And -- and some of those
24 games presumably will be broadcast
25 nationally as well?

90

1 television; is that correct?
2 MR. GOLDFEIN: Just for
3 reference, after the break, are we in
4 Canada now or here?
5 BY MR. DIVER:
6 Q. We're back in the United States.
7 A. Oh, thank you. Ask the question
8 again please.
9 Q. I'm sorry. Thank you.
10 In the United States most games
11 are still shown on local television?
12 A. As a general matter I think
13 that's right.
14 Q. Now, is it true that merely
15 every game is now broadcast either by a
16 local partner or by a national
17 broadcaster?
18 A. That -- that is true, wasn't
19 always the case, but I think that's
20 pretty true now. Maybe -- maybe a
21 couple, handful of games in the course of
22 the season aren't broadcast but --
23 Q. A couple of games of a couple of
24 teams or -- or --
25 A. It -- it -- it -- sometimes

92

1 A. Some, but although my guess is
2 the club where there isn't a commitment
3 to do all of the games, probably isn't
4 going to have lots of games on national
5 TV.
6 Q. Because the games on national TV
7 tend to be the more popular teams?
8 A. More attractive games, more
9 popular teams, yes. Some teams are
10 obviously more popular than others, some
11 teams that we put on national TV do a
12 higher rating than others.
13 Q. And is the selection of which
14 teams are on national TV made by the
15 league or by the broadcaster?
16 A. We do that in conjunction.
17 Obviously, the league has final say, but
18 that's something we do. We try to give
19 our broadcasters a slate of games
20 nationally that they are going to find
21 attractive, marketable and that will draw
22 audience.
23 Q. Now, the fees obtained for the
24 local regional sports network deals in
25 the United States, have they risen or

93

1 falien in recent years?
 2 A. As a general --
 3 MR. GOLDFEIN: Object to the
 4 form of the question.
 5 THE WITNESS: As a general
 6 matter rights fees for sports,
 7 particularly recently, have gone up.
 8 BY MR. DIVER:
 9 Q. And that includes for National
 10 Hockey League clubs?
 11 A. Yeah, yes, but it's not -- it's
 12 not uniform. I mean, you know, if you're
 13 -- if you're not a particulatly
 14 attractive team, if you're not in a
 15 particularly attractive market you may
 16 not see your rights fees go up
 17 dramatically like some of the others.
 18 Q. Are you aware of any clubs whose
 19 rights fees have falien from a new
 20 contract in recent years?
 21 A. Not -- I know a couple of clubs
 22 have had more difficult times than others
 23 negotiating their new deals. And, you
 24 know, sometimes the way the deal gets
 25 structured can mask the economics a

94

1 little bit, sometimes it's a rights fee
 2 but the team sells the inventory, other
 3 times it's a straight rights fee. Some
 4 clubs have had more difficult times
 5 negotiating, but I think as a general
 6 matter rights fees are going up.
 7 Q. And --
 8 A. Which is why -- not to cut you
 9 off -- which is why we want to create an
 10 environment that have always tried, where
 11 we get the balance right, so that clubs
 12 maintain their attractiveness to their
 13 regionals because that's a vital income
 14 stream.
 15 Q. Now, was there ever -- I mean,
 16 you said the fees have been rising
 17 recently. Was there ever a time in the
 18 past when rights were higher than they
 19 are now or -- or is this --
 20 A. No, I actually -- I think -- I
 21 think live sports programming,
 22 particularly for broadcasters and cable
 23 operators, is increasingly important.
 24 Q. And why is that?
 25 A. Because in this technical age of

95

1 digital transmission it's the one thing
 2 you gotta have live. Okay. It's -- it's
 3 -- it's the reason that two weeks ago
 4 when the Sound of Music was live, even
 5 though some critics panned it, I happen
 6 to be a Carrie Underwood fan because
 7 she's married to a hockey player, but
 8 putting that aside, the fact of the
 9 matter is everybody is time shifting
 10 everything. They're zapping out
 11 commercials, there's -- there's no more
 12 point in viewing, you watch what you want
 13 when you want where you want it. Except
 14 sports. Sports is the one thing that
 15 really drives live entertainment. Unless
 16 of course you're doing the Sound of Music
 17 Live. Now, what's also interesting of
 18 the Sound of Music is they did a replay
 19 of it on Saturday night. And the rating
 20 was a fraction of what the live was.
 21 Q. So, but NHL like other live
 22 entertainment, that they're -- it's
 23 correct to say for the NHL that the
 24 demand for its rights are higher now than
 25 they've ever been?

96

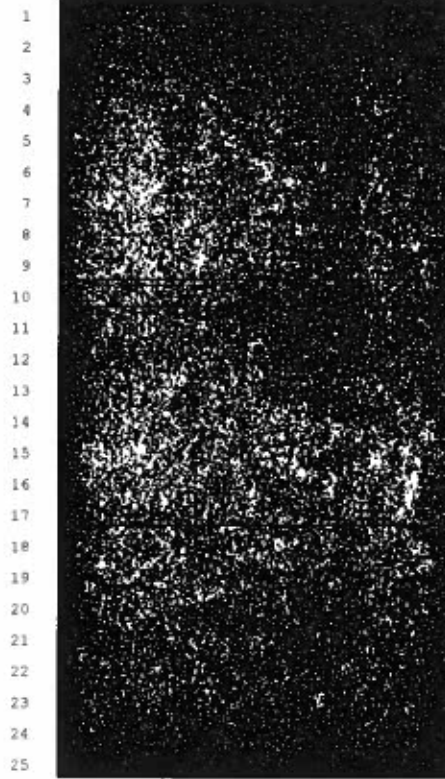
1 A. Yeah, but there's lots of
 2 reasons for that.
 3 Q. Yeah.
 4 A. You know, part of it is because
 5 the environment we're in for sports and
 6 part of it is the game and the business
 7 of the game have probably never been
 8 stronger in the history, almost hundred
 9 year history of the game. Game on the
 10 ice has probably never been better, never
 11 been more competitive. The product has
 12 never been more entertaining or exciting.
 13 All of that goes into the factoring of
 14 what our value is and how we are able to
 15 capture that value.
 16 Q. Now, I want to briefly turn out
 17 attention to Center Ice and GameCenter
 18 Live --
 19 A. Okay.
 20 Q. -- in the United States.
 21 A. Okay.
 22 Q. Now, in general, are
 23 subscriptions to Center Ice rising or
 24 falling?
 25 A. I think that they're flat.

97

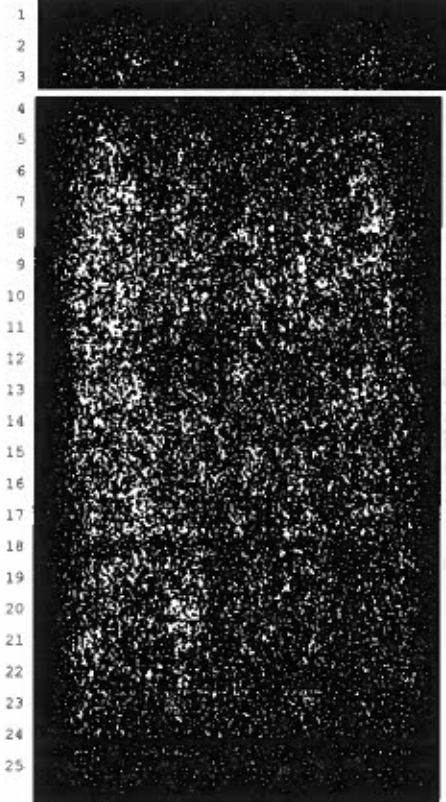
1 Q. Flot. What -- what about
 2 GameCenter Live?
 3 A. That's been rising.
 4 Q. And have -- so I guess flat plus
 5 rising means rising overall?
 6 A. Well, you know, maybe one's not
 7 rising because the other is, I mean --
 8 Q. Yeah.
 9 A. -- I think on some basis you get
 10 to a point where there's a question that
 11 people will pose as to whether or not
 12 there's some cannibalization.
 13 Q. But overall the number of
 14 subscribers is --
 15 A. Well, but, they --
 16 Q. -- on the rise?
 17 A. -- yeah, but that, you know,
 18 that could be -- well, okay. You're
 19 waving your hand I'll stop. And my
 20 counsel will be just as happy if I stop
 21 as well so I'll just answer your
 22 question.



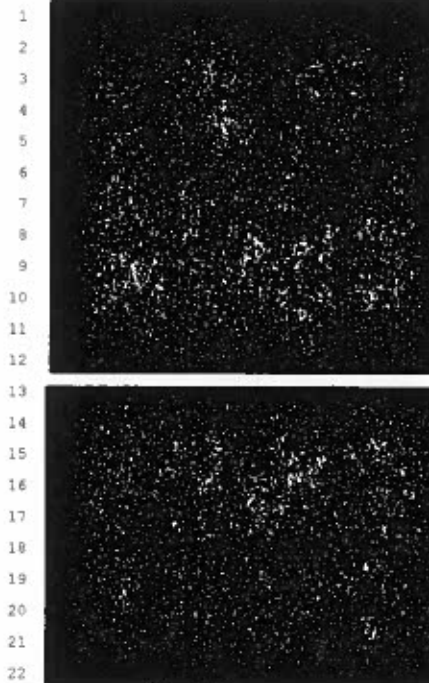
98



99



100



23 Q. This is 3, I believe.
 24 A. That's a very flattering
 25 picture.

101

1 Q. I didn't choose the picture.
 2 ---
 3 (Whereupon, Bettman-3, CBS
 4 internet printout, was marked for
 5 identification.)
 6 ---
 7 BY MR. DIVER:
 8 Q. Have you had a chance to review
 9 it?
 10 A. Yes.
 11 Q. Now, do you recall a discussion
 12 on the Boomer and Carton show --
 13 A. Yes.
 14 Q. -- in which the price for NHL
 15 Center Ice and GameCenter Live was
 16 discussed?
 17 A. I wouldn't have remembered it
 18 but for reading it here.
 19 Q. Now, on the --
 20 A. But that's part of the media
 21 campaign I was talking about.
 22 Q. Right, okay. Now, there's --
 23 there's a quote of you here toward the
 24 bottom of the second page, starting with:
 25 We have partners in that business, so we

102

1 don't have the luxury of just giving it
 2 away. What we're trying to do is get to
 3 a place where we think it's certainly a
 4 very good offer but it's something that
 5 the business partners can live with.
 6 A. I think it's basically the same
 7 words. That's what I said to you in
 8 response to the question.
 9 Q. Now, who are the partners you're
 10 referring to?
 11 A. The distributors. Because this
 12 -- this is not referring just to
 13 GameCenter Live this is also referring to
 14 Center Ice.
 15 Q. Okay. And -- and the
 16 distributors, meaning DirecTV and In
 17 Demand --
 18 A. Um-hum, yes.
 19 Q. -- and the like?
 20 A. Yes, correct.
 21 Q. And now did they insist that you
 22 charge a particular amount?
 23 MR. GOLDFEIN: Object to the
 24 form of the question.
 25 A particular amount as to what,

103

1 GameCenter Live or Center Ice?
 2 MR. DIVER: Center Ice.
 3 MR. GOLDFEIN: Let's be
 4 specific.
 5 MR. KARASIK: Also lacks
 6 foundation.
 7 And do we have a stipulation in
 8 place as we did in the other depositions, that
 9 an objection by one is an objection for
 10 all? I am assuming that's the case.
 11 MR. GOLDFEIN: Yes.
 12 MR. DIVER: I think we have that
 13 in this whole case.
 14 THE WITNESS: Better known as
 15 all for one and one for all.
 16 MR. KARASIK: Great.

104

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 22 Q. And the number of subscribers
 23 increased?
 24 A. Yes.
 25 Q. And it's increased again this

105

1 year?

2 A. My understanding is it is

3 increasing, but that's more anecdotal. I

4 haven't seen the hard numbers.

5 Q. Now, turning back to the league

6 structure. I want to focus at this point

7 on the clubs' home playing territories.

8 Each team has a home playing territory?

9 A. Yes.

10 Q. Now is that defined?

11 A. Typically, it's the 50 miles

12 around where they are designated place to

13 place.

14 Q. And they are not permitted to

15 move outside of their territories,

16 correct?

17 MR. GOLDFEIN: Object to the

18 form of the question.

19 THE WITNESS: I'm not exactly

20 sure what you mean. If -- if you mean a

21 permanent move, we have bylaw 36 which

22 governs the relocation of franchises

23 which is subject to board approval. If

24 you're saying they just want to pick up

25 and play a couple of games somewhere

106

1 else, they can't do that on their own

2 either.

3 BY MR. DIVER:

4 Q. If the Phoenix Coyotes wanted to

5 move to Chicago, they would not be

6 permitted to do so without Board of

7 Governor approval?

8 A. Bylaw 36, which would be a

9 majority vote.

10 Q. And that would include moving to

11 places where there are no NHL clubs?

12 A. Correct.

13 Q. Now, are there current owners

14 who have expressed an interest in moving

15 to other cities?


16 MR. GOLDFEIN: Object to the

17 form of the question.

18 THE WITNESS: Not that I'm aware

19 of.

20 BY MR. DIVER:

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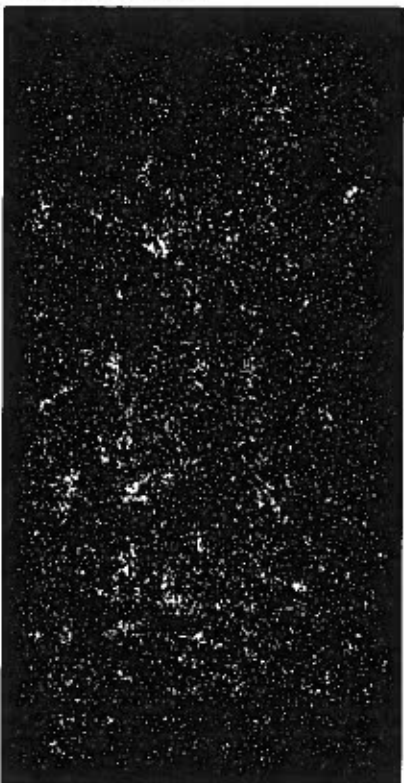
23

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25 MR. GOLDFEIN: Object to the

107

1 form of the question.

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109

1 Q. Now, you -- how long did the NHL
2 own the Phoenix club?
3 A. [REDACTED] Probably about three
4 years.
5 Q. And -- and how did it come to
6 own the Phoenix club?
7 A. Okay.
8 Q. In short.
9 A. Well, there's -- there's no
10 short version. So what -- what happened
11 -- what happened was --
12 MR. GOLDFEIN: I'm just going to
13 interject an objection because this is
14 hardly relevant to this lawsuit and --
15 MR. KARASIK: And foundation.
16 THE WITNESS: I'm happy to
17 answer the question, Shep.
18 MR. GOLDFEIN: I know you are.
19 THE WITNESS: We're not going
20 anywhere so let's -- Okay.
21 So Jerry Moyes owned the Phoenix
22 Coyotes. He had basically bought out
23 Steve Ellman, they were partners for a
24 while. And the building that they played
25 in actually sits in Glendale, Arizona and

110

1 was built by the City of Glendale on the
2 western side of the Valley of the Sun.
3 Jerry was not the best operator as an
4 owner and the team lost money on a
5 continuous basis. The team also had a
6 fairly dismal record on the ice which
7 didn't make attracting fans and doing
8 business any easier.
9 There had been a gentleman named
10 Jim Balsillie. Jim Balsillie, if you
11 Google him, was one of the CEOs and I
12 think founders of RIM the manufacturer of
13 BlackBerry. And he wanted, at times of
14 greater wealth than perhaps he has today,
15 wanted to buy a hockey team and he
16 flirted with buying at one point
17 Pittsburgh, and another point Nashville.
18 And both of those efforts were not
19 successful. And in the course of those
20 efforts a variety of things happened that
21 gave the Board of Governors some level of
22 concern about him as a potential owner.
23 If you remember when we talked
24 about ownership before, I talked about
25 the fact that some aspect relates to

111

1 financial wherewithal, and some aspect
2 relates to who would be a good partner.
3 So, for example, in Pittsburgh when he
4 was talking about it, there was a concern
5 that even though he said he was going to
6 keep the team in Pittsburgh, the
7 Penguins, which are hugely successful
8 now, he was really going to move them.
9 And the executive committee that
10 interviewed him asked for a series of
11 representations which he agreed to at the
12 meeting and then when he tried to
13 document he wouldn't agree to. Then in
14 Nashville when he tried to buy that team.
15 BY MR. DIVER:
16 Q. Let's skip Nashville for a
17 second.
18 A. Well, no, no, Nashville is
19 important.
20 Q. Okay.
21 A. Okay. Because what he then --
22 what he then did was over our objections
23 he started selling tickets in a different
24 place than Nashville when he didn't own
25 the club. He had been told not to do it

112

1 and he went off and sold tickets anyway.
2 So these --
3 Q. In which place did he attempt to
4 sell tickets?
5 A. Hamilton.
6 Q. Ontario?
7 A. Ontario. So then what happened
8 is he gets together which you see -- and
9 I apologize for the length, but you asked
10 for it, and this story requires the
11 foundation. So Moyes decides he wants
12 out and Balsillie decides he wants to
13 have a team and move it. And he's now
14 concerned I believe, Balsillie is, that,
15 A, he might not get approved as an owner
16 based on the prior conduct I just
17 described; and, two, that he might not be
18 able to move the club.
19 So he and Moyes get together,
20 and now Balsillie is offering Moyes more
21 for the franchise than he thinks -- that
22 Moyes thinks he can get by selling it in
23 Arizona. So they said, okay, let's get
24 together we'll sell the club. And what
25 we'll do is we'll put the team in

113

1 bankruptcy. And then the bankruptcy
2 court will order the sale and as a result
3 will circumvent the leagues' rules as to
4 who can own a franchise, and where a
5 franchise can be located. So they put
6 the club into bankruptcy and that's what
7 they try and do. And then we fight for
8 months and months and months and there's
9 tons of litigation, one of the many times
10 my deposition was taken.

11 And to make a long story short,
12 they scared away all of the other
13 potential bidders by being difficult and
14 aggressive and litigious. And I went to
15 the Board of Governors and I said,
16 listen, there's no more important issue
17 for a sports league -- actually, there
18 are no more important issues for a sports
19 league than who can own a franchise and
20 where they are located. And if the only
21 potential buyer for this bankrupt entity,
22 which by the way was current on all of
23 its obligations at the time, but that's a
24 different story, the bankruptcy court is
25 going to strain to find a way to let him

114

1 have the franchise, we need to put in a
2 bid and we need to own it, even if it's a
3 lessor bid. Because frankly what Moyes
4 was being paid by Balsillie was in effect
5 not the value of what Moyes had to sell.
6 Moyes had the value of selling the
7 Coyotes in Phoenix. He didn't have the
8 value of selling it somewhere else
9 because he didn't own that, the league
10 did.

11 And whether or not you want to
12 call that unjust enrichment or
13 free-riding or the like, that's what they
14 were looking to capitalize on. So we put
15 in a bid. We bought the club. And the
16 judge ruled in our favor that, in fact,
17 we should be the bidder and, in fact,
18 that they couldn't circumvent league
19 rules by putting the club into
20 bankruptcy.

21 We then wound up operating the
22 club for a number of years while we were
23 looking to straighten things out and find
24 a buyer.

25 Sorry. You asked for it.

115

1 Q. No, I - I appreciate it. So --
2 so Moyes and Balsillie were attempting to
3 sell the club for the value of the club
4 in Hamilton?

5 A. Actually, we think they
6 undervalued it on that basis as well.

7 Q. They undervalued it on that
8 basis?

9 A. Yeah.

10 Q. And --

11 A. To the extent there was any
12 value at all.




13 Q. Now -- now, some clubs have
14 moved during your tenure; is that
15 correct?

16 A. Yes.








17 Q. And the most recent was the
18 Atlanta Thrashers?

19 A. Yes.

20 Q. Why were they permitted to move?






21 A. Because after a two-year hunt
22 for new ownership in Atlantic -- if you
23 
24 
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116

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7  and we
8 couldn't find a local buyer. And
9 therefore we decided it was time to
10 consider doing something to save the
11 franchise.

12 Q. Because buyers didn't think the
13 club in Atlanta was a viable club?

14 MR. GOLDFEIN: Object to the
15 form of the question.

16 THE WITNESS: You know, you --
17 you would be and we would be speculating
18 as to why. But for whatever reason,
19 nobody found it attractive enough to buy.
20 
21 
22 
23 
24 

25 -- it's -- you -- you can't point this

117

1 with one broad stroke, other than the
2 fact that we tried, and I'm comfortable
3 that ownership tried to find new buyers
4 and we weren't able to do that.

5 BY MR. DIVER:

6 Q. Now, are the Jets profitable
7 new?

8 MR. GOLDFEIN: Object to the
9 form of the question.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Oh. A lot of documents there.

17 BY MR. DIVER:

18 Q. It's reading glasses time.

19 A. Based on the size of that print
20 these may not be good enough.

21 - - -

22 (Whereupon, a discussion was
23 held off the record.)

24 - - -

25 (Whereupon, Bottman-4, NHL

118

1 Fiscal Years' Summary, was marked for
2 identification and marked specifically
3 protected.)

4 - - -

5 MR. DIVER: Now, I -- I realized
6 that last time we marked this. This is a
7 native file printout of a document that
8 was produced.

9 MR. GOLDFEIN: And this is --
10 the whole deposition is highly
11 confidential, but this is really highly
12 confidential.

13 MR. DIVER: In fact, I think you
14 marked it as protected the last time.

15 MR. GOLDFEIN: It's specifically
16 protected.

17 MR. DIVER: Which is fine.

18 THE WITNESS: This is two years
19 ago, correct?

20 MR. DIVER: Correct.

21 BY MR. DIVER:

22 Q. So this is -- well it's --

23 A. This is the last full season.

24 This isn't the lockout season.

25 Q. Correct. And then --

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1 A. The one on top.
2 Q. The one on top is -- is -- is
3 2012, '11, '12, and they go back to 2006,
4 I believe. But I just want to -- I just
5 want to document what we were just
6 discussing here. 2012 the Winnipeg team.
7 You have to go about six pages in to get
8 to Winnipeg.

9 [REDACTED]
10 [REDACTED]

11 Q. Um-hmm.

12 A. Okay. That's in the ballpark of
13 what I thought they would be.

14 Q. And it shows about half --
15 two-thirds of the way down it shows total
16 hockey related revenues --

17 A. Which page are you on?

18 Q. I'm still on I think --

19 A. On the top cover page?

20 Q. Winnipeg, the first page with
21 Winnipeg on it, yeah.

22 A. First page with Winnipeg.

23 MR. LECKMAN: It's the one right
24 before it.

25 BY MR. DIVER:

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1 Q. The one right before the
2 operating --

3 A. Right.

4 Q. It shows hockey related
5 revenues, it's the last one in the line,

6 [REDACTED]

7 A. Um-hmm.

8 Q. And on the first page of 2011,
9 conveniently enough --

10 A. Now we are going to page 2011.

11 Q. Um-hmm.

12 A. Atlanta. I have to get past
13 Washington. Atlanta shows [REDACTED]

14 [REDACTED] and on the
15 first page it shows hockey related

16 revenues of [REDACTED] And that
17 change was from one year to the next?

18 A. Apparently.

19 Q. Now, let me ask you: Was there
20 any interest in moving the Phoenix club
21 to Winnipeg?

22 A. We -- we thought about it, but
23 we decided that we thought -- when I say
24 we decided, in terms of the internal

121

1 discussions. We thought we could save
2 Phoenix for a variety of reasons and we

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 A. Well, when you say Phoenix would
9 have enjoyed, the City of Phoenix or
10 Glendale wouldn't have enjoyed the fact
11 that the building they built at taxpayer
12 expense and was relatively new would have
13 been empty. And it was a question of who
14 is going to own the club. Okay. We --
15 we were gonna sell the club. We believed
16 -- well, first of all. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. Is there --

22 A. And -- and that was a private
23 building in Atlanta and a public building
24 in Glendale. And as the fact that the
25 guys who owned the private building were

122

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 Q. Okay. So, I mean, just -- just
7 -- the reason for moving Atlanta and not
8 Phoenix had to do with the conditions in
9 Atlanta and Phoenix in particular, not
10 that Atlanta had any particular reason to
11 thrive in Winnipeg more than the Coyotes
12 did?

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q. Okay. Now, each team -- let's
23 -- let's get a document for this.

24 - - -

25 [Whereupon, a discussion was

123

1 held off the record.)

2 - - -

3 (Whereupon, Bettman-5, NHL TV
4 Subscriber Overview, was marked for
5 identification.)

6 - - -

7 BY MR. DIVER:

8 Q. Now, I produced this document
9 for purposes of discussing the television
10 territories. I will represent that this
11 copy has some handwritten notes on it,
12 but the reason I've -- I've chosen it is
13 because it's the one whose colors have
14 come through in such a way that you can
15 tell where the territories begin and end.

16 A. So you -- so you think.

17 Q. Well --

18 A. Do we know whose handwriting
19 this is?

20 MR. GOLDFEIN: Mine is not in
21 color.

22 MR. LECKMAN: It's shading.

23 THE WITNESS: No, no, he's
24 making the point of the shading but --
25 but it's -- it's not so good.

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1 BY MR. DIVER:

2 Q. Do you know whose handwriting
3 that is?

4 A. Is that yours or ours?

5 Q. It's yours.

6 A. Okay. It's not mine but it
7 comes from one of my people.

8 Q. I'm not gonna ask you about the
9 handwriting.

10 Now, turning to Buffalo.

11 A. Turning to Buffalo on the chart
12 on the first page or on the map?

13 Q. The pages.

14 A. So the --

15 Q. Or we can -- you can look at the
16 first page as well.

17 A. You tell me what you want.

18 Q. Let's -- let's look at the
19 chart.

20 A. Okay.

21 Q. Okay.

22 MR. GOLDFEIN: Just for the
23 record, we're on --

24 MR. DIVER: We're on the second
25 -- the summary page.

125

1 MR. GOLDFEIN: The one with the
2 last three Bates Nos. 069.
3 BY MR. DIVER:
4 Q. 069, right. So this document
5 for the record is called: TV Subscriber
6 Overview, September 2012. And the
7 beginning Bates Nos. 2523068. And the
8 chart has a 69.

9 Now, can you explain what the 50
10 mile inner refers to in this chart?

11 A. That's what we talked about
12 before, that's the territory that a club
13 gets.

14 Q. For playing games?

15 A. Yeah. That's its market,
16 territory.

17 Q. Now, what is sphere refer to
18 here?

19 A. That -- that is -- we -- we --
20 our territories don't necessarily align
21 with how you can distribute locally.
22 Just because we have a 50-mile territory
23 don't necessarily mean that the cable
24 system that's in that 50-mile territory
25 ends where we are. So we try to create a

126

1 -- an extended territory that has some
2 notional if not greater relationship with
3 the team, so that fans who most -- would
4 be most likely to be interested in that
5 team can follow the game. And so you go
6 to the extended sphere and you go to the
7 outer market. They are viewed at like
8 rings around the center which at some
9 point get completely attenuated and make
10 no sense, but as you gradually work your
11 way out there's a sensibility to their
12 relationship with the team.

13 Q. So what are the teams' rights
14 within a sphere?

15 A. They get to continue -- they get
16 to carry their games and, I think, don't
17 pay an outer market fee.

18 Q. They can carry their games on
19 regional sports networks that --

20 A. Yeah.

21 Q. -- are there?

22 A. Locally.

23 Q. Now, if I were to refer to the
24 sphere of influence, would I normally be
25 understood to be including what you have

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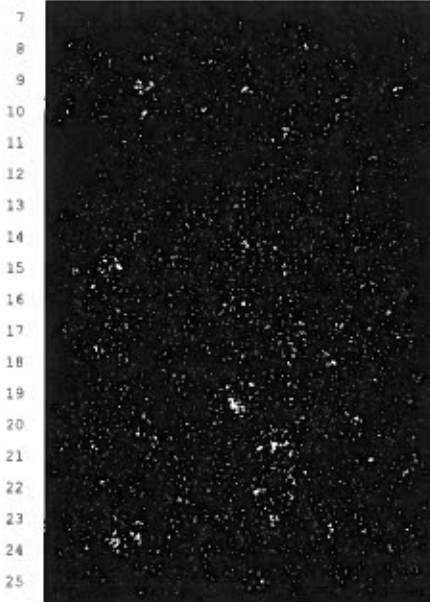
1 as sphere plus 50-mile inner in this
2 case?

3 A. Yeah, yeah.

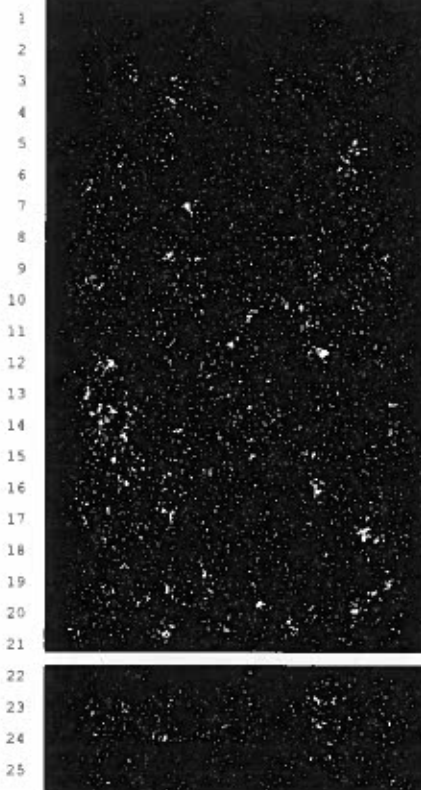
4 MR. GOLDFEIN: Objection.

5 BY MR. DIVER:

6 Q. Now, what is an extended sphere?



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1 A. I don't believe so, no.
 2 Q. Now, do you know when the
 3 spheres of influence were created?
 4 A. No. They -- they predate me, I
 5 believe.
 6 Q. Do you know what -- you just
 7 said why. New --
 8 A. Well, when you say the why, is
 9 you want to give somebody a local
 10 territory that is sensible relative to
 11 the interest in the team.
 12 Q. Now, what is the outer market?
 13 A. That's a further extension for
 14 which they have to pay an outer market
 15 fee. Again, we don't like to give away
 16 the product for nothing. So at some
 17 point if it's not worth the payment of
 18 the fee, you shouldn't be there. It has
 19 to have some value.
 20 Q. Now, are -- are -- are clubs
 21 entitled to exclusives in their -- in
 22 their outer markets or --
 23 A. No, some of them overlap.
 24 Q. Some of them --
 25 A. You know, but that's based on

130

1 geography. In other words, we have
 2 territories that tend to overlap whether
 3 or not it's, you know, if you go down the
 4 eastern seaboard as among say
 5 Philadelphia and the New York teams,
 6 there's, you know, inherent overlap.
 7 Q. Now, staying on this page
 8 looking at the top three teams, total.
 9 A. What a coincidence, they all see
 10 to be --
 11 Q. They all seem to be the New York
 12 clubs.
 13 A. Yes.
 14 Q. And they all have total --
 15 A. Well, not exactly the same. The
 16 Islanders and Jersey have the same.
 17 Rangers a little different, that probably
 18 stems from the fact that the Rangers were
 19 here first.
 20 Q. But all of them have TV
 21 territories that have more households
 22 than nearly all of the other clubs,
 23 correct?
 24 MR. GOLDFEIN: Object to the
 25 form of the question.

131

1 THE WITNESS: Yes, but you
 2 wouldn't -- you don't -- please, don't
 3 sound surprised, as we sit in Manhattan.
 4 Obviously, the population here is a lot
 5 greater than it is anywhere else.
 6 BY MR. DIVER:
 7 Q. And Buffalo has --
 8 A. Not so much.
 9 Q. Not so much. So these spheres
 10 weren't designed to equalize --
 11 A. Well, it -- it -- to the extent
 12 we might extend a little bit more
 13 geographically for a smaller market to
 14 try and get them a little more help and a
 15 little more interested, help the
 16 regions have a sustainable business for
 17 them locally. Because if the regional
 18 doesn't have a sustainable business
 19 they're not going to pay a rights fee,
 20 they're not going to produce the games,
 21 they're not going to promote the team,
 22 they're not going to invest. So we -- we
 23 -- you extend as a practical matter, to
 24 the extent it makes sense. I think if
 25 you look at the maps, you know, the map

132

1 where the population's less, gets a
 2 little bit bigger than in an area where
 3 it's more congested.
 4 Q. Now, among the three teams on
 5 the top --
 6 A. Yes.
 7 Q. -- the New York teams?
 8 A. New York/New Jersey. We don't
 9 want --
 10 Q. New York metropolitan area?
 11 A. Yes.
 12 Are you in Philly or south
 13 Jersey?
 14 Q. Philly.
 15 A. See, that's why.
 16 Q. Now, the Rangers amongst those
 17 three are the highest revenue-generating
 18 team historically, correct?
 19 A. Of those three?
 20 Q. Yes.
 21 A. Yes. They were the first one
 22 here, they're an original six team.
 23 Q. Okay. And yet they have the
 24 largest --
 25 A. But again --

133

1 Q. -- market?

2 A. -- that's historical because the

3 Islanders in New Jersey joined them later

4 on.

5 Q. And if I look at -- okay. Has

6 there -- has there been any consideration

7 of -- of evening out to make it more fair

8 to the New Jersey Devils and the New York

9 Islanders?

10 MR. GOLDFEIN: I want to object

11 to the form of the question.

12 It's speculative.

13 THE WITNESS: That -- that

14 wasn't anybody's understanding.

15 BY MR. DIVER:

16 O. Okay.

17 A. I don't think anybody has that

18 expectation.

19 Q. Now, if we turn to the Anaheim

20 page, which is the next page. And I

21 think we must have a similar result and

22 then compare it to -- to the Los Angeles

23 Kings.

24 A. Again, the Kings were there

25 first. So see, let's go back and look at

134

1 the numbers. So Anaheim is at 7 million

2 360 -- oh, I see, and LA's -- actually,

3 Anaheim is a little bit more.

4 Q. Which doesn't...

5 A. Doesn't what?

6 Q. Doesn't match the numbers on

7 here.

8 A. No, it doesn't.

9 Q. And it certainly doesn't match

10 the map.

11 A. But other than that it's all

12 good?

13 Q. But, again, Los Angeles is a

14 larger territory, it appears?

15 A. Well, they're -- I think this

16 doesn't make sense because if you look at

17 the map, L.A. has more shaded-in areas

18 than Anaheim. So you know what, my guess

19 is these were ballpark things. Internal

20 just to get a sense of where things were.

21 As I said, I didn't prepare this so I

22 can't tell you why it says what it says.

23 Q. Now --

24 A. It's -- because Anaheim doesn't

25 have -- I can't read it, but whatever's

135

1 above San Bernardino, other than Clark,

2 the other two the Kings have but the

3 Ducks don't. And everything else -- no,

4 actually they have the San Luis Obispo

5 and -- for the Kings but not for the

6 Ducks. And everything else is the same?

7 Q. That's how it looks on the map.

8 A. But then how does L.A. have

9 fewer people?

10 Q. Somebody at the league has some

11 answering --

12 A. You must've copied this wrong.

13 Q. I don't -- I don't know how to

14 explain that.

15 A. But you know what, you -- you

16 get a sense of it.

17 Q. I -- I get a sense. And -- end

18 both teams, Clark --

19 A. Clark is Las Vegas.

20 Q. Is Las Vegas?

21 A. Right.

22 Q. Now, the Phoenix Coyotes aren't

23 permitted to broadcast into Clark County;

24 is that correct?

25 A. Well, let's look at the map. I

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1 will confess I don't know everybody's

2 territory off the top of my head. They

3 are not in -- it doesn't look like

4 they're in Las Vegas. You know, some of

5 this can also be the regional. Depends

6 on -- it's conceivable that the L.A. RSN

7 goes into Clark County but doesn't go

8 into the other places. So some of this

9 may be determined as a practical matter

10 based on how the distributors are

11 distributing.

12 Q. But if -- if you permitted

13 Phoenix to go into Clark presumably that

14 would be --

15 A. Well, we don't, so, you know.

16 Q. But -- but -- but you've

17 already --

18 A. But it may also be, you

19 remember, Phoenix moved from Winnipeg

20 after -- after Anaheim and L.A. were

21 already there. So it may have been part

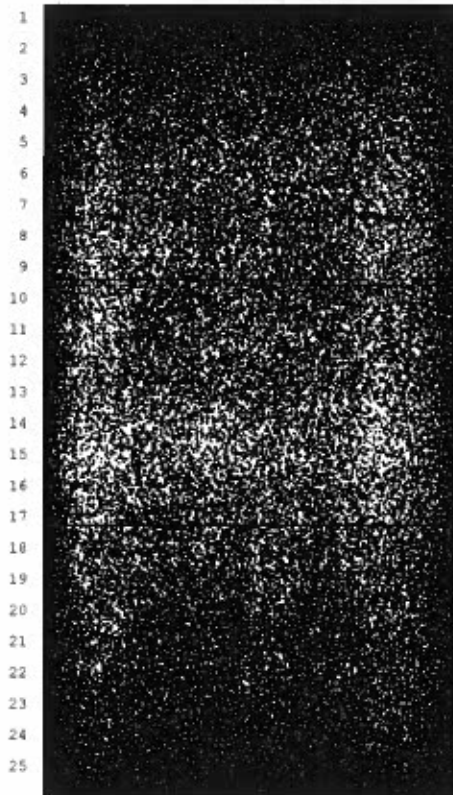
22 of the move that they knew they weren't

23 getting Clark because it had already been

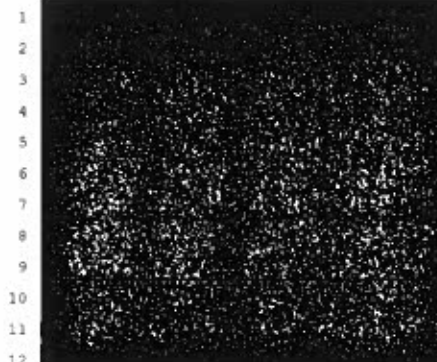
24 given to the two southern L.A. teams.

25 I'm sure there was a good reason for it.

137



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BY MR. DIVER:

Q. But as it currently stands, it would bring both the number of households and the value of the Coyotes' home territory closer to that of L.A. if they were also permitted to broadcast into -- into Las Vegas?

A. Not necessarily because maybe people in Las Vegas -- there may be two or three people that like the Coyotes in Vegas and maybe there are hundreds that like L.A. and Anaheim because they've been getting it longer. Again, this may

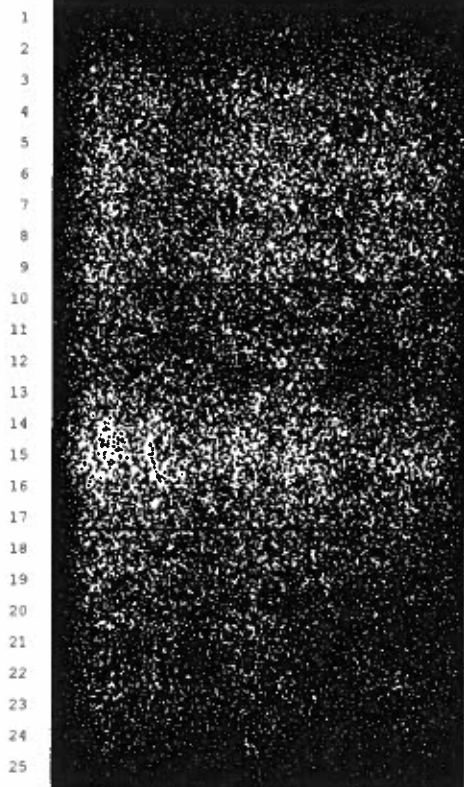
139

1 be a function of when the club moved
2 because it was in the mid nineties that
3 the team went to Phoenix.
4 Q. Now, if Phoenix -- we will leave
5 poor Phoenix aside for -- for now.
6 MR. GOLDFEIN: Are you -- are
7 done with this?
8 THE WITNESS: Yes.
9 MR. DIVER: For now.
10 MR. GOLDFEIN: For now.
11 MR. DIVER: Why don't we take a
12 quick break?
13 THE WITNESS: You want to take a
14 break?
15 MR. DIVER: Let's go off the
16 record.
17 THE WITNESS: Sure. That's
18 fine.
19 THE VIDEOGRAPHER: 11:53, off
20 the record.
21 ---
22 (Whereupon, a short break was
23 held off the record.)
24 ---
25 (Whereupon, Bettman-6, printed

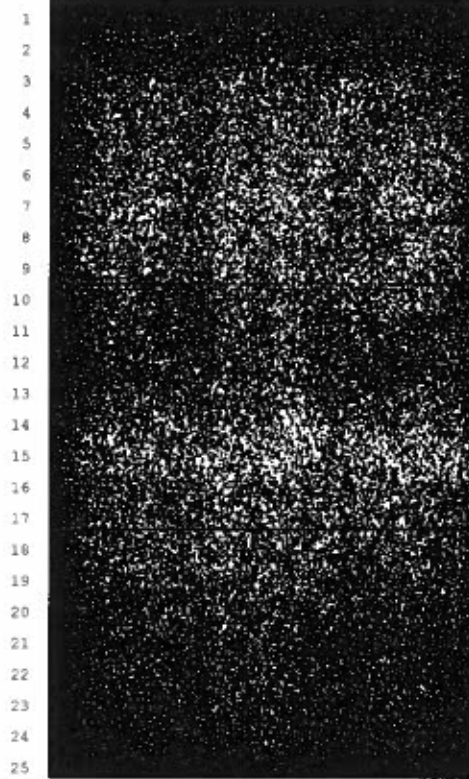
140

1 e-mail, was marked for identification.)
2 ---
3 THE VIDEOGRAPHER: 11:56, back
4 on the record.
5 BY MR. DIVER:
6 Q. You've had a chance to review
7 this?
8 A. I skimmed it. Do you want me to
9 read it word for word?
10 Q. It's up to you.
11 A. It depends what you're going to
12 ask me. Well, why don't you ask me the
13 question and then I'll see if I need to
14 read it.
15 Q. Do you recall the substance of
16 this e-mail exchange?
17 A. Vaguely.
18 Q. Who is David Proper?
19 A. He runs media and broadcasting
20 for us at the NHL, Proper.
21 Q. Proper. And can you just
22 describe the issue he was addressing in
23 this e-mail?
24 [REDACTED]
25 [REDACTED]

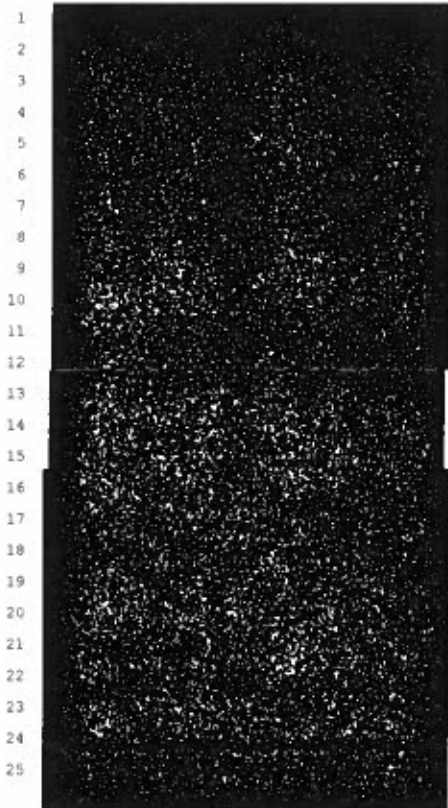
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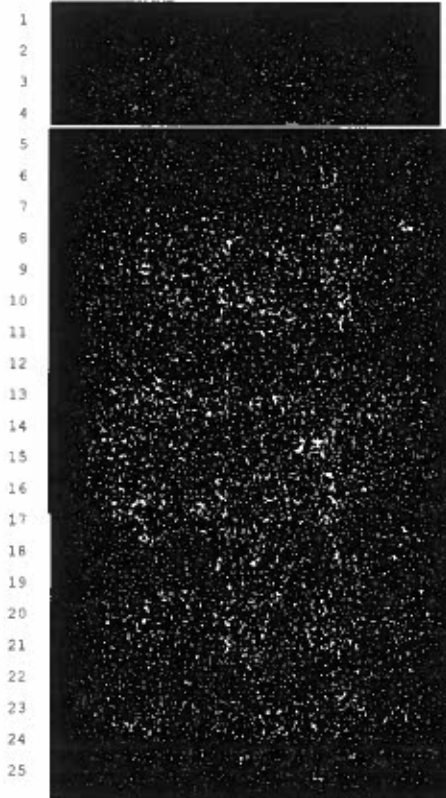
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143



144



145

1 boundaries can be redrawn, ad hoc based
2 on club consent, parens, (albeit, with
3 league approval) end parens. I think
4 that the concern for, quote, "slippery
5 slope" end quote, becomes very real in
6 this context because all clubs, parens,
7 (and their RSNs), parens, have a highly
8 motivated interest in increasing their
9 local distribution footprints.

10 A. Yes, but not everybody else's.
11 In other words, you -- you would like
12 more subs but you don't want to have
13 anybody having anymore of yours because
14 the exclusivity that the RSNs have pay
15 for investing is vital. And so as a
16 general matter, some clubs might try to
17 take advantage of others, weaker clubs,
18 stronger clubs. It's just -- this is one
19 of those things that didn't make any
20 sense.

21 Q. Now, wouldn't it be the case the
22 fans in Florida would have benefitted
23 from a choice of -- of telecasts of these
24 games?

25 A. Same game. I -- I think the

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1 it. It's not like just simply saying,
2 you know, do what you want, it will take
3 care of itself. It's a lot more
4 complicated than that.

5 Q. Now -- so you're saying not many
6 fans would have cared about this?

7 A. In my opinion, yeah.

8 Q. But how would fans have been
9 harmed by this request?

10 A. It's not a question of fan harm,
11 they're getting the game. It's a
12 question of what logistically and
13 effort-wise and expense-wise makes sense
14 for us to do.

15 Q. And if the clubs wanted to go to
16 the expense of doing so, you didn't think
17 they should be permitted to do that?

18 A. I don't -- I don't think the
19 clubs would have wanted to go to the
20 expense of doing it. And, again, this
21 died of its own weight. They weren't
22 very invested in this.

23 Q. But the league would have
24 prevented them from doing it even if --

25 A. Well, it never got -- it never

146



9 Q. But you -- you offer both feeds
10 on Center Ice and GameCenter Live?

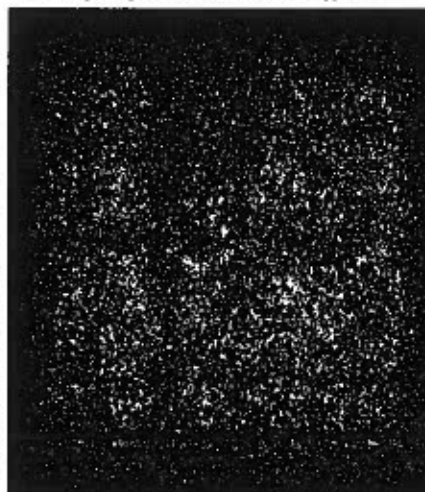
11 A. Well, yeah, but that's because
12 you have people from different places
13 watching. You're not necessarily -- it's
14 -- it's not -- if -- if your question is
15 if GameCenter Live only went to south
16 Florida of the Tampa games, whether or
17 not it would make sense when they played
18 Florida to have the second feed. But you
19 have to remember, we are dealing with
20 hundreds of games, and hundreds of
21 thousands of subscribers, there needs to
22 be some order. In order -- so that we're
23 distributing what we're supposed to
24 distribute, when we're supposed to
25 distribute and who we're supposed to do

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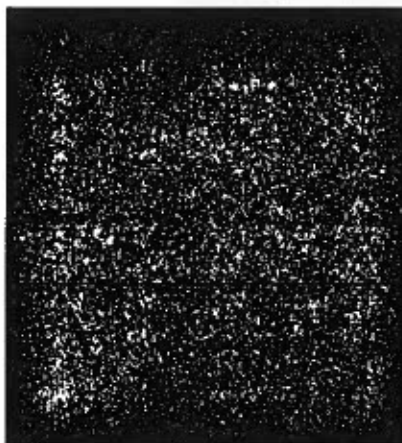
1 go to the next level. But the reasons in
2 here are all perfectly valid.

3 Q. So as a general matter the
4 league enforces the television territory
5 strictly and this was an example?

6 A. That -- that -- that -- that's
7 probably a gross overstatement which if
8 I'm you I would try and do, but the fact
9 is we have rules and we try to apply them
10 the way they are intended to be applied.



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MR. DIVER: Okay. We can take a break there.

THE VIDEOGRAPHER: 12:05, off the record:

--

(Whereupon, a lunch break was held off the record.)

--

THE VIDEOGRAPHER: The time is 1:02. We are back on the record.

THE WITNESS: We are very

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prompt.

BY MR. DIVER:

Q. We are indeed.

A. Keep flipping.

Q. There I am. There I am. Okay.

A. Oh, good.

Q. And we are going to start right out with --

A. This will be seven.

MR. GOLDFEIN: This will be seven.

--

(Whereupon, Bettman-7, Resolutions, Broadcast Matters, was marked for identification.)

--

BY MR. DIVER:

Q. Exhibit-7. And NHL No. 0000269 entitled: Resolutions, Broadcast Matters, Regulations for TV Transmission by the U.S. Clubs.

Do you recognize this document?

A. Vaguely.

Q. Do you recognize that it's a document that's contained within the

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league's lex scripts?

A. Appears to be.

Q. Did you review this document for this deposition?

A. Not that I recall.

MR. GOLDFEIN: I'm going to object to the use of the document, as an incomplete document outside of taking selective pages out of the lex scripts.

MR. DIVER: Okay.

MR. GOLDFEIN: But you may proceed.

BY MR. DIVER:

Q. Okay. Now, in paragraph two --

A. Before you do that, what you have here from me says approved December 11th, '84, and then on the second page it says December 11, '84 amended June 23rd, '91.

Does this include the amendments?

Q. This is the document that's contained in the lex scripts.

A. But I -- this is two pages out of the lex scripts. I'm not 100 percent

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sure what it is, but go ahead.

Q. Now, the paragraph number two.

A. Yes.

Q. Do you see where it says: Each club may exploit its home games through TV as follows?

A. Um-hum, yes.

Q. By standard TV or by non-standard TV in any manner and in any location --

A. Yes.

Q. -- except through transmission or systems originating in the home territory or sphere of influence of the visiting club?

A. Yes.

Q. Two, through transmitters or systems originating in the home territory of any other club on a day in which such clubs' team is playing at home?

A. Yes.

Q. Or three, via a non-local distributor such as USA Network, ESPN, COMSAT, or similar entity. And, four, as provided in any U.S., Canadian

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1 sponsorship agreement.

2 Did you understand that in 1984

3 the rules of the NHL permitted clubs to

4 broadcast their home games anywhere in

5 the country --

6 MR. GOLDFEIN: Object.

7 MR. DIVER: -- subject to those

8 restrictions?

9 MR. GOLDFEIN: Object to the

10 form of the question.

11 THE WITNESS: I -- I never

12 really formed a particular opinion one

13 way or the other. This predates me at

14 the NHL. And based on the time, as it

15 relates to me personally and the

16 evolution of the league and the league's

17 business, this isn't anything I paid a

18 lot of attention to.

19 BY MR. DIVER:

20 Q. Okay. Now, do you know why

21 these rules prohibited the transmission

22 originating in the home territory of any

23 other club on the day in which the club

24 was playing a home game?

25 A. You would be asking me to give

154

1 you an educated guess, which I'm happy to

2 do, as long as we understand it's an

3 educated guess. It probably has

4 something to do with the home gate.

5 Q. Now, do you believe that

6 televising games harms home gate as a

7 general matter?

8 MR. GOLDFEIN: Object to the

9 form of the question.

10 THE WITNESS: Televising what

11 games?

12 BY MR. DIVER:

13 Q. Do you believe that televising

14 any -- do you believe that televising

15 home games, first of all, harms home

16 attendance?

17 A. Are we talking about that game,

18 are we talking about a national telecast,

19 are we talking about a local telecast --

20 Q. The question --

21 A. -- are we talking about the

22 visiting telecast, are we talking about a

23 competing telecast with a different feed?

24 What are you talking about?

25 Q. Well, the way I just asked the

155

1 question was intended to talk about the

2 home teams' telecast of that game.

3 A. Home team -- having its own

4 games televised?

5 Q. Um-hmm.

6 A. I think that's important.

7 Q. Important in what way?

8 A. In terms of it goes to the

9 discussion we had about why it's

10 important that the NHL have a national TV

11 contract. You want somebody or some

12 thing or some entity to invest in your

13 product, to give your team a presence in

14 your market, to give your fans a platform

15 to connect with the game, to give the

16 game, the team, a big league feel. In

17 the absence of which, I think, it's --

18 it's clear that if you don't get your

19 games televised, not only are you losing

20 a source of revenue, but you're probably

21 damaging your business.

22 Q. Now, who is Bill Wirtz?

23 A. Bill Wirtz is deceased. He was

24 the governor of the Chicago Blackhawks

25 and he is -- was for a time the Chairman

156

1 of the Board of Governors of the NHL.

2 And it was his family that owned the

3 Blackhawks, Chicago stadium. And now

4 with Chicago's stadium having been

5 replaced by the United Center, his family

6 owns, I don't know if it's his family or

7 a trust or what have you, but the Wirtz

8 in some capacity own the United Center

9 50 percent with Jerry Reinhardt, who owns

10 the Bulls.

11 Q. Now, did Bill Wirtz have a

12 policy or did the Blackhawks have a

13 policy while he owned them of not

14 televising home games?

15 A. Yes, they did.

16 Q. Why did he do that?

17 A. You would have to ask him. He

18 thought he was protecting, quote, the

19 season reservation holders. But it's a

20 policy that has been long discredited,

21 even while he was alive.

22 Q. And until when did the

23 Blackhawks have that policy?

24 A. Until he died.

25 Q. And then how soon after he died

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10 Q. Now, is the same true of
11 national telecasts, do national telecasts
12 harm the attendance of local teams?
13 A. We -- we don't believe so. We
14 think it elevates everybody, provided
15 it's the right balance. If you did too
16 many games that could be an issue. If
17 you did too many games of a particularly
18 compelling team on national TV it could
19 be an issue that would affect the other
20 teams adversely.
21 - - -
22 (Whereupon Bettman-8, Appendix,
23 President's Ruling Re Broadcast Rights of
24 Member Clubs, was marked for
25 identification.)

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1 - - -
2 BY MR. DIVER:
3 Q. Okay. Bettman Exhibit-8 is
4 entitled from the Appendix, President's
5 Ruling Re Broadcast Rights of Member
6 Clubs.
7 A. Issued on June 13, 1984 --
8 MR. GOLDFEIN: Object --
9 THE WITNESS: Almost 30 years
10 ago.
11 MR. GOLDFEIN: Well, again, I'm
12 gonna have the same objection. This
13 document is part of a larger document
14 called the Lex Scripta and it's
15 incomplete on the subject of broadcast
16 rights in the NHL. And I'll object to
17 the use of it, out of content.
18 But proceed.
19 BY MR. DIVER:
20 Q. Is -- is this document contained
21 in the lex scripta?
22 A. I assume so.
23 Q. Have you seen it before?
24 A. Probably.
25 Q. Did you review it for this

159

1 deposition?
2 A. No.
3 Q. Now, let me draw your attention
4 -- well, let me ask you for -- when did
5 you first become aware of it?
6 A. I don't know. It's not
7 something that I find particularly
8 important.
9 Q. Now, have you had a chance to
10 review it?
11 A. No, no.
12 Q. Would you like?
13 A. It depends on what you're going
14 to ask me.
15 Q. Do you understand this letter to
16 be an official interpretation of section
17 four of the NHL constitution?
18 A. If it is, it's based on the
19 facts, circumstances, and as the world
20 existed in 1984. I'm not sure it bears
21 any reality to what has been taking place
22 for the last two decades.
23 Q. Okay. Now, turning to what's
24 marked as page 15 on the bottom, the
25 third paragraph from the bottom. I'll

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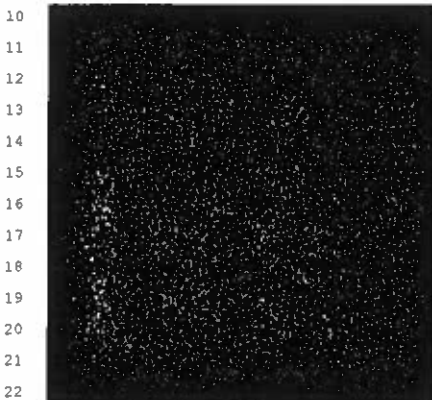
1 read into the record.
2 MR. GOLDFEIN: I'm going to
3 object to you reading a document into the
4 record, which is ranked hearsay.
5 MR. DIVER: Okay.
6 MR. GOLDFEIN: And improper
7 deposition question.
8 BY MR. DIVER:
9 Q. Just to make sure we understand
10 it: In summary, although various
11 proposals have been submitted over the
12 years, no constitutional change has ever
13 been made that permits the restraining of
14 broadcasts into the home territories of
15 the member clubs. Thus it is absolutely
16 clear that under the NHL Constitution no
17 member club at this time can restrain or
18 prevent the broadcasting of any game at
19 any time except the broadcasting of its
20 home games.
21 Now, to your knowledge, has
22 article four of the constitution been
23 amended since this letter was issued?
24 A. Well, as a practical matter
25 that's no longer the policy. So either

161

1 in form, substance, by practice or by
 2 entering into national TV contracts, this
 3 isn't the state of the world. This would
 4 be like a dinosaur roaming the earth.
 5 Q. But you don't know of any formal
 6 action to either amend the
 7 constitution --
 8 A. Well, as I said, the -- this is
 9 no longer what's in effect. The
 10 evolution of how we got to where we are,
 11 is either resolutions, the approval of
 12 national TV contracts, practice or the
 13 like. But please don't assume that this
 14 is what's been in effect. This is 1984.
 15 This is ancient history in terms of the
 16 media landscape.
 17 Q. Now, let me just ask you one
 18 more quick question --
 19 A. Sure.
 20 Q. -- on this issue. At the top of
 21 page 14 it says: In fact, it was the
 22 consensus that constitutional amendment
 23 to prevent broadcast invasion would not
 24 be practical until or unless U.S.
 25 legislative correction was forthcoming.

163

1 those -- that's how it came to us.
 2 A. Okay.
 3 Q. Did you draft this letter
 4 yourself?
 5 A. I signed it. I'm sure I read
 6 it. I'm sure I edited it. Did I draft
 7 it from scratch, I couldn't tell you.
 8 Q. Can you summarize the underlying
 9 disputed issue in this?



23 Q. Well, let me --
 24 A. How'd I do?
 25 Q. We'll see.

162

1 Are you aware of any U.S.
 2 legislative correction?
 3 A. The Sports Broadcasting Act was
 4 probably around this time. I mean, this
 5 thing goes on to cite a letter from 1959.
 6 As I said, this -- this is not relevant
 7 to anything in the current media world.
 8 Q. Okay. I believe this is nine.
 9 -- --
 10 (Whereupon, Bettman-9, NHL
 11 letter dated August 2, 1996, was marked
 12 for identification.)
 13 -- --
 14 BY MR. OIVER:
 15 Q. Exhibit-9 is marked as New York
 16 Islanders 0071040, appears to be a
 17 memorandum from Gary Bettman to a number
 18 of individuals. Do you recognize this
 19 letter?
 20 A. Looks vaguely familiar.
 21 Actually, it's a letter not a memorandum.
 22 It's got my signature on it. There's
 23 also some markings on page two. I don't
 24 know who made those.
 25 Q. I can -- I can tell you that

164

1 A. Okay.
 2 Q. On the bottom of page three, do
 3 you see the bottom paragraph --
 4 A. Yes, I do.
 5 Q. -- on page three?
 6 Okay. And do you see that you
 7 describe the history of the spheres of
 8 influence since 1980?
 9 A. Yeah. And I'm talking about the
 10 fact that it's important to smaller
 11 market clubs to avoid free-riding that
 12 more distant clubs would have to preserve
 13 them.
 14 Q. Well, let me just go through
 15 some of these things you said. It -- it
 16 said by defining club broadcast areas the
 17 league intended both to offset the lack
 18 of a national television contract and,
 19 two, want to focus on this part for now,
 20 to enhance the value of the television
 21 rights marketed by each team. And then
 22 you explain this. The latter purpose was
 23 to be served both by expanding the
 24 broadcast area available to smaller
 25 market clubs which otherwise would

165

1 televise only to limited numbers within



6 Now, focusing on the first part
7 of -- of that last sentence, where you
8 say that the spheres were intended to
9 expand the broadcast area available to
10 the smaller market clubs?

11 A. Yes.

12 Q. Is -- was it your intention in
13 writing that sentence to describe the
14 intentions of the league when they
15 created the sphere of influence --

16 MR. GOLDFEIN: Object --

17 MR. DIVER: -- in 1980.

18 MR. GOLDFEIN: -- object to the
19 form of the question.

20 THE WITNESS: It was my
21 understanding as to the importance of
22 having the rules work this way.

23 BY MR. DIVER:

24 Q. And how does that understanding
25 square with the fact that the rules we

166

1 just saw permitted clubs to broadcast
2 their games in any location in the United
3 States?

4 A. Well, with all due respect, you
5 are not listening to what I said about
6 the '84 agreement. As far as I was
7 concerned and am concerned it's been gone
8 and irrelevant. It had no bearing on
9 this.

10 Q. But my understanding, and you
11 can correct me, is that you're describing
12 what the league was doing in creating the
13 spheres in 1980?

14 A. That may have been, but the fact
15 of the matter is the purpose here --
16 well, then, that obviously makes my
17 point. That the practice didn't jive
18 with the document you showed me.

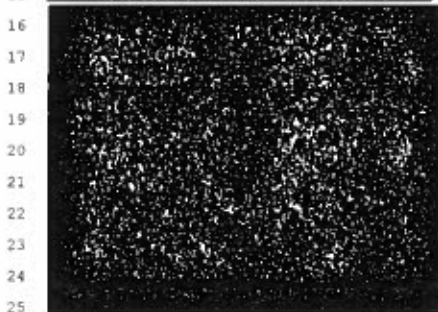
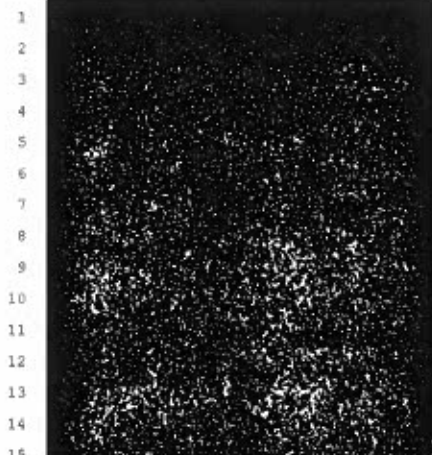
19 Q. Now, what did you mean by
20 avoiding free-riding by geographically
21 more distant teams that might have
22 greater broadcast resources --

23 A. If you --

24 Q. -- available to them?



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1 [REDACTED]
2 [REDACTED]
3 Q. And -- and -- and how is it
4 they're -- who -- who's -- in what sense
5 are free-riding? They're benefiting from
6 the fact that they're members of the
7 league?

8 A. The fact that there's any
9 interest at all in them is a function of
10 the [REDACTED] proximity not that the fact
11 that the [REDACTED] are a full
12 state away.

13 Q. And -- and what in particular do
14 you mean by free-riding?

15 A. Meaning misappropriating the
16 value that's created by somebody else by
17 working and investing and building the
18 market.

19 Q. Now, were the -- were the
20 [REDACTED] not working in
21 investing and building the market in
22 [REDACTED]

23 A. I think not. I think their
24 games were simply being carried there.

25 Q. And what were the [REDACTED] doing

169

1 to build the market in [REDACTED]
 2 A. They're in closer proximity,
 3 they're only [REDACTED] to
 4 the extent -- I actually think their
 5 minor league affiliate was probably there
 6 too, at that point in time as well, the
 7 [REDACTED] So they are the
 8 presence that's there. They're
 9 advertising, they're promoting, they're
 10 selling tickets. They're trying to get
 11 people interested in the game.
 12 Q. And they were not succeeding
 13 because the --

14 [REDACTED]
 15 [REDACTED]
 16 Q. But they are closer?
 17 A. Well, they're 60 miles away.
 18 Q. And I'm just -- I'm just trying
 19 to get a clearer understanding as how
 20 what you're describing is different than
 21 [REDACTED] and we will just focus on the
 22 [REDACTED] now, were competing for business
 23 in [REDACTED] were more
 24 successful?
 25 MR. GOLDFEIN: Object to the

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1 form.
 2 THE WITNESS: I'm not sure they
 3 were more successful.
 4 BY MR. DIVER:
 5 Q. They were able to get their
 6 games broadcast in [REDACTED]



17 Q. Now, let -- let me ask you now
 18 -- now, it couldn't have been that the
 19 spheres were intended to prevent
 20 free-riding if the spheres were created
 21 [REDACTED]
 22 [REDACTED]
 23 MR. GOLDFEIN: Object; to the
 24 form of the question.
 25 It's calling for speculation.

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1 THE WITNESS: You know, if you
 2 -- if you go back to the late seventies,
 3 early eighties, mid eighties, it was a
 4 point of evolution. As I think somewhere
 5 in this letter it said there was no
 6 national TV contract, or maybe it was in
 7 one of the other documents you showed me.
 8 And regional sports channels in those
 9 days were in their formative stage.
 10 Everybody in all of the leagues were
 11 trying to figure out what the right
 12 balance is. And so there was always a
 13 little tweaking and, you know, dealing
 14 with, particularly around the edges, what
 15 made sense as broadcast and media policy
 16 evolved.
 17 BY MR. DIVER:
 18 Q. Now, let me turn -- now, I'm --
 19 I'm looking at page four of the letter
 20 here, okay. Page numbers are at the top.
 21 A. No, I know. Go ahead.
 22 Q. Now, the paragraph the begins in
 23 late 1984, am -- am I correct that you're
 24 describing the regulations that -- for
 25 television broadcasting that we just

172

1 discussed?
 2 A. Apparently, I'm -- I'm reciting
 3 the evolution of what happened. And it
 4 ends by saying throughout this period,
 5 whatever period we're talking about,
 6 [REDACTED] was considered a part of the
 7 [REDACTED] sphere of influence only.
 8 Q. But under those regulations
 9 nothing prevented the [REDACTED] from
 10 broadcasting into [REDACTED] on days the
 11 [REDACTED] weren't playing a home game,
 12 correct?
 13 A. Apparently.
 14 Q. And, now, in the next paragraph
 15 you describe the ESPN contract that the
 16 league reached in 1985?
 17 A. That's what it says.
 18 Q. In the second sentence it says:
 19 No formal contract was signed between
 20 ESPN and the league?
 21 A. Okay.
 22 Q. Now, and then in the middle of
 23 the paragraph --
 24 A. You see but it goes on to say
 25 that under the ESPN arrangement, at least

173

1 as Joel Nixon articulated it to the
 2 league, he froze where everybody was.
 3 Because, again, if -- if everybody can go
 4 everywhere, then you won't have a
 5 national broadcaster interested in
 6 carrying your games nationally.
 7 Q. Now, who is Joel Nixon?
 8 A. At the time I believe he was the
 9 vice president of broadcasting for the
 10 NHL.
 11 Q. Now, did -- did Joel Nixon have
 12 the authority to change the bylaws
 13 concerning broadcasting?
 14 A. No, but this may go to the other
 15 point that was made and I don't know
 16 specifically as I look at this, but
 17 whatever you think the rules were in the
 18 early eighties, the fact is subsequent
 19 things happened that would have modified
 20 it. So obviously there was an agreement
 21 even though apparently it wasn't reduced
 22 to writing with ESPN. And my assumption
 23 is that agreement was approved by the
 24 Board of Governors. And by approving
 25 that agreement, it would have overridden

174

1 any rule it was inconsistent with at the
 2 time.
 3 Q. Okay. So just -- just -- just
 4 to clarify. You think the event that
 5 made the prior rules no longer valid was
 6 the signing of the ESPN --
 7 A. No --
 8 Q. -- contract?
 9 A. -- that's not exactly what I
 10 said.
 11 Q. Or the --
 12 A. What -- what -- what this does
 13 is, whether or not that is the A to B
 14 chain of events, the fact is this is an
 15 example, assuming that this is accurate,
 16 and I have no reason to believe that it's
 17 not, the fact is there are things that
 18 would have amended the rules that had
 19 been entered into. One such example
 20 would be a national TV contract. This is
 21 what I testified to this morning and this
 22 is just an example consistent with what I
 23 testified to.
 24 Q. Now, let me ask you: [REDACTED]
 25 is in the outer market, would -- would

175

1 have been in the outside of the sphere of
 2 influence for the [REDACTED] and the
 3 [REDACTED] correct?

176

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 -- --
 7 (Whereupon, Bettman-10,
 8 Governors' Minutes, was marked for
 9 identification.)
 10 -- --
 11 BY MR. DIVER:
 12 Q. Exhibit-10 is Bates No.
 13 NHL1532925. It's dated September 27,
 14 1982 titled Minutes of the Sixty-Fifth
 15 Annual Meeting of Governors of the
 16 National Hockey League, held at the
 17 Westin Hotel, Toronto on June 21 & 22,
 18 1982.
 19 MR. KARASIK: Is there another
 20 copy? This is 10?
 21 MR. DIVER: Um-hmm.
 22 BY MR. DIVER:
 23 Q. Okay.
 24 A. Okay.
 25 Q. Turning to page seven, which is

177

1 Bates No. ending 931. See item number
2 two?
3 A. Yes, broadcast regulations.
4 Q. And it talks about how broadcast
5 regulations for television transmission
6 by U.S. teams has shown in the agenda and
7 attached as an addendum to these minutes
8 were approved unanimously for the
9 1982-83, and 1983-84 seasons.
10 If you turn to Bates No. ending
11 940, you will see broadcast regulations.
12 A. Okay.
13 Q. There's an overview. And after
14 the numbers it says for the benefit of
15 those in the NHL who not participate in
16 the creation of this concept in 1979-80,
17 some background is in order.
18 It discusses the creation of the
19 spheres of influence.
20 A. Actually, it talks about cable
21 tending this convenience obsolete. It's
22 consistent with the discussion we had on
23 how this all evolves.
24 Q. Right. So, because the 50-mile
25 radius home territory was not seen as

178

1 consistent with the advent of cable
2 television, it created the spheres of
3 influence; is that -- is that your
4 understanding?
5 A. It says what it is says. I
6 don't remember when or if I ever saw
7 this.
8 Q. Now, if you look at the next
9 page at the top. It says: From this
10 came the concept of establishing for each
11 U.S. club a sphere of influence for TV
12 exploitation purposes that could co-exist
13 with the constitutional home territory.
14 And then it says: Within the sphere, a
15 club would retain all income from any
16 kind of TV exploitation.
17 And then the next sentence says:
18 Outside of this sphere a club could
19 exercise its constitutional right to
20 exploit its home games.
21 A. Yes.
22 Q. And if you turn to page ending
23 in Bates 944.
24 MR. GOLDFEIN: Is there a
25 question as opposed to reading --

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1 MR. DIVER: There will be.
2 MR. GOLDFEIN: -- excerpts --
3 MR. DIVER: I want to make sure
4 we're all on the same page.
5 MR. GOLDFEIN: -- and partial
6 sentences.
7 It's not an appropriate way of
8 examination.
9 BY MR. DIVER:
10 Q. Okay. I just want -- well, do
11 you see paragraph two at the bottom?
12 A. Um-hmm. That would be a yes.
13 Sorry for the um-hmm.
14 Q. Now, do you understand this rule
15 is to be consistent with the 1984
16 regulations in the president's letter?
17 MR. GOLDFEIN: Object to the
18 form of the question.
19 THE WITNESS: They are what they
20 are, they say what they say.
21 BY MR. DIVER:
22 Q. Turning back to page seven.
23 A. Page seven of the minutes?
24 Q. Yeah. At the top, do you see
25 where it refers to U.S.A. cable

180

1 agreement?
2 A. Yes.
3 Q. You are aware of the National
4 Hockey League's national contract with
5 the U.S.A. Network at that time?
6 A. I am based on the fact that you
7 just refreshed my recollection. I
8 wouldn't have focused on it otherwise.
9 Q. Okay. Were you aware of -- of
10 that contract when you wrote the letter
11 resolving the [REDACTED] and --
12 A. I wrote the letter 17 years ago,
13 I really don't recall.
14 Q. Now, going back to the letter.
15 I want to turn to page seven of the
16 letter.
17 A. Okay.
18 Q. Second paragraph. You discuss
19 that -- in the middle of that paragraph,
20 that a national cable contract would have
21 little value if geographically-distant
22 clubs could rob the national broadcaster
23 of exclusivity or free ride on its
24 efforts.
25 A. I think I said that to you a few

181

1 minutes ago.
2 Q. Now, what do you mean by robbing
3 the national broadcaster of its
4 exclusivity?

5 A. The -- the fact of the matter is
6 a broadcaster, whether or not it's in the
7 local territory which we discussed
8 before, or nationally, has to make a
9 substantial investment in addition to
10 paying for rights fees. They have to pay
11 for production. They have to pay for
12 promotion. They have to schedule other
13 programming. They have to do brand
14 building both their own and the entities

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

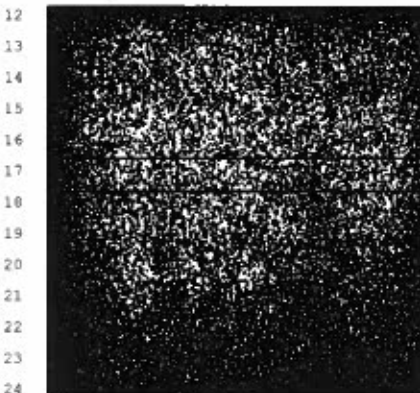
19 Q. Now, is that a concept of
20 exclusivity or is that something else?
21 Did -- did -- did ESPN have an exclusive
22 right to broadcast NHL games in
23 Rochester?

24 A. They had the exclusive right to
25 carry games nationally. And nationally

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8 Q. And how does that -- put that in
9 concrete terms for [REDACTED] Now -- how
10 was the broadcasting of the [REDACTED]
11 robbing --



25 Q. So it's not strictly speaking

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1 exclusivity it's a dilution issue?

2 A. I -- I think -- I think -- I
3 think you're -- you're --

4 MR. GOLDFEIN: Object to the
5 form.

6 BY MR. DIVER:

7 Q. I'm trying to understand.

8 A. Okay. What -- what -- see,
9 there are different forms of exclusivity.
10 There can be exclusivity of a particular
11 game. There can be exclusivity of a
12 particular time. There can be
13 exclusivity in terms of the exploitation
14 of certain types of rights. So the fact
15 that I may have the exclusive national
16 rights as a broadcaster means that nobody
17 else can carry games nationally. By the
18 same token, while I'm exercising those
19 rights, I might have exclusivity on
20 Saturday nights. So that there are no
21 other games allowed other than the games
22 I am taking on Saturday nights. Or I may
23 have exclusivity as to a particular game,
24 such as on a Monday or Sunday night I say
25 I'm gonna televise the Rangers playing

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1 Chicago and I have the exclusive right to
2 that game so the local regionals can't
3 carry it, and as a result I'm not
4 blacking out. So there are all different
5 kinds of exclusivity. So when you say
6 exclusivity has something to do with it,
7 you really have to be much more specific
8 as to the type of exclusivity you're
9 talking about.

10 Q. I -- I understand. I'm -- I'm
11 just trying to understand the exclusivity
12 at issue here. If -- ESPN was not able
13 to exclude the Sabres from broadcasting
14 in Rochester, correct?

15 A. Well, ES -- ESPN according to
16 this document, again, which is 17 years
17 old --

18 Q. Right.

19 A. -- apparently Joel Nixon told
20 everybody in the league, ESPN's going to
21 take our national rights, remember we
22 didn't have a national contract before
23 this, unlike the other major sports, so.

24 Q. Didn't we just say that they had
25 a --

185

1 A. U.S. --
 2 Q. -- national contract with the
 3 U.S.A. Network?
 4 A. -- yeah, but I don't even know
 5 that it was in effect at the time. It
 6 was a modest agreement. What was it, a
 7 million six? What -- what they were
 8 trying to do is say, okay, everybody's
 9 frozen where they are. Because if
 10 there's more creeping ESPN's gonna feel
 11 that what they have nationally is going
 12 to be diluted.
 13 Q. Because they'll be more games --
 14 A. There'd be more games.
 15 Q. -- broadcast by --
 16 A. In more places.
 17 Q. In more places.
 18 A. Exactly.
 19 Q. Now, let me -- and then you also
 20 say that a national cable contract would
 21 have little value if
 22 geographically-distant clubs could free
 23 ride on its efforts. What do you mean by
 24 free-riding in that instance?
 25 A. In other words, ESPN is trying

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1 to promote us, invest in us, as a
 2 national property but if everybody else
 3
 4
 5
 6
 7
 8
 9 Q. But that would also increase the
 10 investment of the clubs who are trying to
 11 compete for audiences in upstate New
 12 York?

187

1
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 17 Q. But it would be caused by an
 18 over proliferation of --
 19 A. Well, that's -- you're
 20 characterizing it in words I am trying to
 21 describe what it is.
 22 Q. Now, the [REDACTED] is
 23 broadcast into [REDACTED] correct, as far
 24 as you know?
 25 A. I -- I -- I would have to look

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1 at the map. I assume so but I would have
 2 to look at the map.
 3 Q. Now, would the free-riding
 4 analysis be any different for [REDACTED]
 5 [REDACTED]
 6 A. The further you get away from
 7 [REDACTED] the lesser of an issue it is.
 8 The closer you get to [REDACTED]
 9 [REDACTED] the less it is.
 10 It's a balancing act.
 11 Q. It's -- it's more of an issue
 12 because it may cause more harm to the
 13 [REDACTED]
 14 A. Well, and the national package
 15 as we discussed.
 16 Q. And how does it -- how does it
 17 affect ESPN more if there are games in
 18 [REDACTED]
 19 [REDACTED]
 20 A. The further -- the further you
 21 are away from the -- there used to be a
 22 saying which has morphed over time that
 23 games are important and have value in the
 24 shadow of the arena. That's obviously
 25 been stretched, but the further you get

189

1 away from stadium or the arena, the more
2 attenuated it gets.

3 Q. But there was sufficient

4 [REDACTED]
5 [REDACTED]

6 A. Ot -- or it may have just been
7 simply that [REDACTED] was being carried
8 there because of other programming. They
9 may have had the [REDACTED] at
10 the time and they didn't have a team in
11 [REDACTED] And since the regional channel
12 was carried up there they wanted to
13 continue to have the same programming.
14 You gotta remember, these regionals carry
15 a variety of things.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 prospects continued to grow.

2 You okay?

3 Q. Now, let me ask you another
4 question about the national TV contracts.

5 A. Which one?

6 Q. When there's a national TV game
7 on broadcast today, doesn't matter, are
8 the ratings for those games higher in
9 markets that have strong hockey teams?

10 MR. GOLOFEIN: Object to the
11 form of the question.

12 Incomprehensible.

13 BY MR. DIVER:

14 Q. When the -- when the NBC Sports
15 Network shows a game --

16 A. Are you talking NBC now or NBC
17 Sports Network?

18 Q. Start with Sports Network. When
19 they show a game involving New York and
20 Los Angeles, are the ratings for that
21 game higher in Detroit than they would be
22 in less traditional hockey --

23 MR. GOLOFEIN: Object to the
24 form --

25 MR. DIVER: -- cities as a

191

1 general matter?

2 MR. GOLDFEIN: Object to the
3 form of the question.

4 THE WITNESS: General matter
5 questions are always difficult to answer.
6 So let me -- let me try this. There's a
7 variety of factors that go into ratings.
8 It could be the following of the team.
9 We have some teams that are 100 years old
10 and some that are 12 years old. So that
11 if you're a team that's 100 years old,
12 you probably have a wider, deeper group
13 of fans than a more recent team in a
14 so-called newer and nontraditional
15 market.

16 Ratings are impacted also by the
17 market of the team playing. So if -- if
18 -- if you have Boston or Chicago, for
19 example, playing in the Stanley Cup final
20 your rating may be greater because there
21 are more people in those markets who are
22 watching the team. The team playing, its
23 history, its strength, how well it's
24 playing, how well known it is are all
25 factors that go into what the ratings

192

1 are.

2 BY MR. DIVER:

3 Q. Well, let's take the -- the
4 Stanley Cup from last year with Boston
5 and Chicago.

6 A. Um-hmm.

7 Q. Would the ratings for those
8 games -- were the ratings for those games
9 higher in Detroit than they were in
10 Miami? Would you --

11 A. Off the top of my head I don't
12 know. I would guess probably yes.

13 Q. And that would be presumably
14 because --

15 A. Most of the ratings, though,
16 most of the people watching, came out of
17 Boston and Chicago.

18 Q. But there are also -- but -- but
19 there are also fans who watched these
20 games in other cities?

21 A. Some. We -- we -- we tend to
22 have a little more difficulty with this
23 than other leagues. Our fans tend to
24 focus on who's playing more than just
25 pure NHL hockey because the history of

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1 the league is such there are some teams
 2 that are older than others, coupled with
 3 the fact that when we didn't have
 4 extensive national broadcasting, your
 5 ability without a national broadcaster to
 6 follow the playoffs was limited.
 7 Q. But there's enough interest, is
 8 there not, in national non-playing
 9 markets for there to be a national
 10 coverage of the playoff games?
 11 A. Well, there is now for the first
 12 time. Took us a long time to get there.
 13 It took me -- took me 18 or 19 years to
 14 get us to that point.
 15 Q. Now, does the NBC Sports Network
 16 free ride on the efforts of the Detroit
 17 Red Wings for developing the hockey
 18 market in Detroit thereby raising its
 19 ability to obtain ratings in Detroit?
 20 A. I don't think they're
 21 free-riding. I think everybody works in
 22 conjunction to grow the product -- the
 23 product. And NBC is paying us \$2 billion
 24 for the privilege of doing that.
 25 Q. But they're benefitting from the

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1 efforts of the clubs who have
 2 developed --
 3 A. Well, it -- it -- it goes both
 4 ways. I think the profile of the Red
 5 Wings has an important property, has been
 6 raised by NBC. And I also think NBC
 7 benefits by having the Detroit Red Wings
 8 followed and having their games on
 9 national TV.
 10 MR. DIVER: Let's go off the
 11 record for five minutes.
 12 THE WITNESS: Sure.
 13 THE VIDEOGRAPHER: 1:51, we are
 14 off the record.
 15 - - -
 16 (Whereupon, a short break was
 17 held off the record.)
 18 - - -
 19 THE VIDEOGRAPHER: This begins
 20 disk three. The time is 1:59. We are
 21 back on the record.
 22 BY MR. DIVER:
 23 Q. Okay. I want to change gears
 24 and turn to the collective-bargaining
 25 agreement which -- a portion of which

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1 will be Exhibit-11, I believe.
 2 - - -
 3 (Whereupon, Bettman-11,
 4 Collective-Bargaining Agreement, was
 5 marked for identification.)
 6 - - -
 7 BY MR. DIVER:
 8 Q. Now, I have --
 9 A. This is all of it?
 10 Q. No.
 11 MR. GOLDFEIN: No.
 12 THE WITNESS: I was going to
 13 say, didn't look that way to me.
 14 BY MR. DIVER:
 15 Q. I -- I have pulled this from the
 16 NHL.com website. Because it's 500 pages
 17 long I have taken the liberty of
 18 including only the table of contents,
 19 article 49 which is entitled: Player
 20 Compensation Cost Redistribution System.
 21 And article 50 which is entitled: Team
 22 Payroll Range System.
 23 Now --
 24 MR. GOLDFEIN: I'll just state
 25 my general objection to the use of this

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1 document, which is incomplete rather than
 2 the entirety of the document.
 3 THE WITNESS: And we'll go one
 4 step further and assume this is what it
 5 purports to be because nobody's checked.
 6 BY MR. DIVER:
 7 Q. So does the NHL have a player
 8 salary cap system?
 9 A. Yes.
 10 Q. And is that what I just referred
 11 to as --
 12 MR. GOLDFEIN: You need to be
 13 specific as to time here.
 14 MR. DIVER: I'm -- I'm currently
 15 discussing the current
 16 collective-bargaining agreement.
 17 THE WITNESS: That's the way I
 18 took the question, Shep.
 19 MR. GOLDFEIN: Okay.
 20 THE WITNESS: Especially since
 21 I'm looking at the CBA.
 22 BY MR. DIVER:
 23 Q. And -- and that's what's covered
 24 by article 50, the team payroll system?
 25 A. In essence.

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1 Q. And to follow up on Mr.
2 Goldfain's question, the team has had a
3 similar but somewhat different system
4 since --
5 MR. GOLDFEIN: The league.
6 THE WITNESS: The team or the
7 league?
8 BY MR. DIVER:
9 Q. Excuse me. The league. Since,
10 what, 2005; is that correct?
11 A. Yes, yes.
12 Q. Now, what -- what is the salary
13 cap, currently?
14 A. Actually, which one?
15 Q. Describe the different caps as
16 you understand them.
17 A. There are three different caps.
18 There is a cap on how much the league
19 spends as a whole. There's a cap on how
20 much any individual team can spend, and
21 there's a cap on what any individual
22 player can get.
23 Q. Focusing on how much the
24 individual teams can spend, how much is
25 the cap this year?

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1 A. I think it's 64.3, I could be a
2 a hundred thousand off. Those are
3 millions.
4 Q. And the -- the -- the cap that
5 you described for the amount the league
6 can spend on players, how much is that?
7 A. 50 percent of whatever HRR,
8 which is known as Hockey-Related
9 Revenues.
10 Q. And is 50 percent also the
11 minimum that the league can spend --
12 A. Yes.
13 Q. -- on player salaries?
14 A. We have to spend 50 percent as
15 of league of HRR.
16 Q. And how does the cap relate to
17 the league 50 percent?
18 A. Which cap?
19 Q. Excuse me, the team cap.
20 A. It's -- it's based on a
21 computation. There's a factor for
22 building and a projection of the
23 following year's revenues based on the
24 then current concluded year's revenues.
25 You take 50 percent based on the

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1 definition of HRR, you take out benefits,
2 you divide by 20 -- by 30, which gives
3 you what is called the midpoint and then
4 you add 15 percent up, and down
5 15 percent for the minimum, roughly.
6 Q. So the minimum -- what is the
7 minimum this year, team salary?
8 A. It's probably 52, right? Is
9 that it? No, it's 44.
10 MR. GOLDFEIN: This year --
11 THE WITNESS: Nobody's at the
12 minimum so who knows.
13 MR. GOLDFEIN: I mean, just so
14 we don't have a misleading record. This
15 year there are -- there are plug numbers.
16 THE WITNESS: That's right.
17 MR. GOLDFEIN: This year for
18 this last season and this season were
19 plug numbers for --
20 THE WITNESS: So it's 44 I think
21 and --
22 MR. GOLDFEIN: Yeah.
23 THE WITNESS: -- and 64,
24 somewhere in that range.
25 BY MR. DIVER:

200

1 Q. Now, you recently announced
2 projected cap for next year; is that
3 correct?
4 A. What I announced was a
5 projection based upon a projection.
6 Q. Okay. And -- and what was your
7 projection based upon your projection?
8 A. Of the cap about 71 million.
9 Q. And next year will the cap be
10 determined not by plug numbers but by the
11 percentages?
12 A. That's correct.
13 Q. And I don't know if my math is
14 good enough to know if I subtract 30
15 percent from that will I get the floor or
16 do I have to do it more --
17 A. No, you have to do 15 percent.
18 Q. 15 up, 15 down?
19 A. Right.
20 Q. But that would be roughly --
21 A. Yeah.
22 Q. -- roughly, okay. Now, what is
23 the purpose of the minimum payroll?
24 A. Well --
25 Q. -- level?

201

1 A. -- let's not pick out one piece.
 2 The purpose of the way the system works
 3 is to create an environment where all
 4 teams can be competitive.
 5 Q. And how does the system work to
 6 achieve that?
 7 A. Well, by creating a range within
 8 which everybody's spending, theoretically
 9 everybody will have enough money and not
 10 spend too much money to ice a team that
 11 would make the competitions competitive.
 12 It's what we call competitive balance.
 13 Q. Now, is payroll spending the
 14 primary determinant of competitive
 15 balance?
 16 A. It can be, not necessarily. You
 17 can spend a lot of money and have a team
 18 that doesn't perform well. It tends to
 19 be aberrational. You can spend a little
 20 within the range and have a team that's
 21 competitive but that also tends to be
 22 aberrational. We think we've created a
 23 band based on the composition of your
 24 team, experience versus young kids,
 25 developing versus veterans, that should

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1 enable all teams to have an opportunity
 2 to be competitive. And if you look at
 3 our competitive balances since the
 4 installation of this system. It's been
 5 nothing short of phenomenal, probably the
 6 best competitive balances we have ever
 7 had and maybe some have suggested the
 8 best competitive balance that any sport's
 9 ever seen.
 10 Q. Now, when you say since the
 11 system has been implemented you are
 12 talking about since 2005?
 13 A. Yeah.
 14 Q. And you haven't seen any
 15 evidence that the current CBA made that
 16 any less the case?
 17 A. No, competitive balance is still
 18 strong.
 19 Q. How -- how -- how do you measure
 20 competitive balances?
 21 A. You -- you -- some -- some of it
 22 is intuitive, but I've only been in
 23 professional sports for 32 years, but I
 24 look at what's going on night in and
 25 night out on any given night can any team

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1 win. And we look at the races to the
 2 playoffs, which lots of teams in it for
 3 as long as possible. And then when you
 4 get to the playoffs unpredictability.
 5 And we've had in the last seven or
 6 eight years teams that just make it into
 7 the playoffs going to the Stanley Cup
 8 final.
 9 Q. Now, is it the league's position
 10 that maximizing competitive balance would
 11 be beneficial or is there an appropriate
 12 level of competitive balance that's short
 13 of that?
 14 A. I think you want games to be as
 15 competitive, playoff races to be as
 16 competitive, you want the playoffs to be
 17 as competitive as possible.
 18 Q. And the reason for that is
 19 because you like it or because you think
 20 it drives fan interest?
 21 A. I think it drives fan interest,
 22 which is why I like it.
 23 Q. Fair enough. Now, have you done
 24 any analysis to see the relation between
 25 various measures of competitive balance

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1 and fan interest?
 2 A. All -- all of that stuff is
 3 around. Our fan interest based on data
 4 that we see is -- is very high. The --
 5 the game, the product that's known as the
 6 NHL, is something that seems to have more
 7 than satisfactory span -- fan response.
 8 Q. Now, you said you have more --
 9 you have a higher level of competitive
 10 balances than potentially any other
 11 sports league. Are you including sports
 12 leagues in other countries in that
 13 analysis?
 14 A. No.
 15 Q. Just -- just in the American --
 16 A. North America.
 17 Q. Do you ever compare the
 18 competitive balance level of the NHL to
 19 leagues in other countries?
 20 A. I mean, I'm aware of anecdotally
 21 but it's not something that I spend a lot
 22 of time dwelling on.
 23 Q. Now, if -- if -- if maintaining
 24 a relative -- now, is -- is the -- is the
 25 payroll range that you've instituted --

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1 is -- is the difference between the top
 2 and the bottom higher or lower than in
 3 other leagues --
 4 MR. GOLOFEIN: Object to the
 5 form of the question.
 6 MR. OIVER: -- in the United
 7 States?
 8 THE WITNESS: I think if you are
 9 referring to the range, I think it's
 10 narrower than other leagues.
 11 BY MR. DIVER:
 12 Q. And -- and -- and so -- so you
 13 have a closer payroll range and because
 14 of that you think --
 15 A. Closer or comparable.
 16 Q. Now, do you also employ a
 17 revenue-sharing system?
 18 A. Yes. It has a fancier name that
 19 you read as article 49, but, I think it's
 20 players cost redistribution system,
 21 something like that.
 22 Q. Player compensation cost
 23 redistribution system.
 24 That was very good.
 25 A. Not exactly good, but close

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1 enough.
 2 Q. Now, before talking about the
 3 player compensation cost redistribution
 4 system, do the clubs share gate receipts
 5 with visiting clubs?
 6 A. No.
 7 Q. Do they share any other revenue
 8 derived from the arena with visiting
 9 clubs, concessions, parking?
 10 A. No.
 11 Q. Do they share any television or
 12 radio revenue with other clubs?
 13 A. Nationally, national revenues
 14 that we generate through national
 15 contracts or through NHL Enterprises
 16 business we share equally.
 17 Q. But the -- but the revenues that
 18 are not resulted from national contracts
 19 that the teams generate they don't share
 20 any of those with the club they're
 21 participating in the game with --
 22 MR. GOLOFEIN: Object to the
 23 form of the question.
 24 MR. OIVER: --- is that correct?
 25 MR. GOLOFEIN: It's lacking

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1 foundation.
 2 THE WITNESS: As a general
 3 matter, yes.
 4 BY MR. DIVER:
 5 Q. Now, why does the NHL not share
 6 revenue in this manner? Why does it
 7 choose a different manner?
 8 A. Well, it's not atypical for
 9 sports but the fact is that's the model
 10 that's evolved. Everybody owns their
 11 team and their market, and teams try
 12 while they're part of the broader NHL
 13 business and they derive their value from
 14 being part of the NHL what they invest in
 15 locally and the opportunities that they
 16 have in their markets is something that
 17 they do and they invest in.
 18 Q. And they do that because that
 19 incentivizes the clubs to invest or what
 20 -- what is the value in that?
 21 A. This is all part of the
 22 balancing act. And -- and the goal is
 23 within the construct, it's the NHL, is to
 24 try to maximize revenues and maximize how
 25 we think within that balance we can best

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1 interact with our fans, for the benefit
 2 of the game and to maximize revenues.
 3 Q. But you've also decided to share
 4 some of the revenues that are generated
 5 that -- that way, correct?
 6 A. I'm not sure I understand the
 7 question.
 8 Q. The -- the -- the player cost
 9 redistribution system?
 10 A. Well, that's -- that's revenue
 11 sharing in -- under another name to
 12 ensure that all teams have an opportunity
 13 to afford to be competitive.
 14 Q. And why is that a superior
 15 system to sharing gate revenue or -- or
 16 local television revenue with --
 17 A. It's -- it's just different of
 18 how you define it. Clubs -- clubs that
 19 typically have the biggest revenues are
 20 writing the biggest checks.
 21 Q. But the system that you have is
 22 no better or worse than the system I've
 23 described would be?
 24 A. No, we think our system works
 25 well. You're -- you're describing a

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1 system you made up. I'm describing a
 2 system that we're actually using.
 3 Q. But -- but you don't have a --
 4 I'll leave it there.
 5 Now --
 6 -- --
 7 (Whereupon, Bettman-12,
 8 SportsBusiness Journal printout, was
 9 marked for identification.)
 10 -- --
 11 BY MR. DIVER:
 12 Q. Now, Exhibit-12 is a printout
 13 from the internet. An article from
 14 SportsBusiness Journal dated August 1,
 15 2005, entitled: Inside the Complex NHL
 16 Deal.
 17 A. Okay.
 18 Q. Now, you can take your time with
 19 it.
 20 A. I don't -- you know what, it's
 21 written by the media on our business. I
 22 assume you are not going to assert that
 23 what's in here is factual. If you have a
 24 question ask me.
 25 Q. My -- my question pertains to

210

1 the bottom two lines of -- of this page,
 2 my initial question, which appear to be a
 3 quote from Bill Daly. Just for the
 4 record who is Bill Daly?
 5 A. Deputy commissioner.
 6 Q. Now, he's quoted as saying: Our
 7 view on revenue sharing has always been
 8 that you only need revenue sharing to
 9 allow all clubs to afford representative
 10 and competitive payrolls, and that's what
 11 this revenue sharing does.
 12 A. That's what it says.
 13 Q. Is that an accurate statement of
 14 the league's view on revenue sharing?
 15 A. Well, as far as it goes. I
 16 mean, there's a longer story behind this.
 17 The fact is your biggest expense is your
 18 player costs. So the theory is if you're
 19 getting help with your biggest costs, and
 20 it enables you to be competitive, the
 21 hope is subject to the structure that we
 22 have set up and the balance we have set
 23 up with the league and the clubs, the
 24 teams hopefully will be in a financial
 25 position where they can be competitive,

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1 successful on the ice and viable from a
 2 business standpoint.
 3 Q. Now, when he says that you only
 4 need revenue sharing to allow all clubs
 5 to afford representative and competitive
 6 payrolls.
 7 What -- what do you take him to
 8 mean by representative and competitive
 9 payrolls?
 10 MR. GOLDFEIN: Object to the
 11 form of the question.
 12 THE WITNESS: Actually, I think
 13 I just answered it but I'll do it again.
 14 To be able to have a team that can
 15 compete on the ice and give your fans
 16 hope that you're in it.
 17 BY MR. DIVER:
 18 Q. And how do you know how close
 19 you are as it were? I mean --
 20 A. You -- you -- you know, let me
 21 give you a little bit of an anecdotal
 22 piece to this.
 23 Before this deal in 2005, we had
 24 teams with \$20 million payrolls and we
 25 had teams with \$80 million payrolls. And

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1 teams with \$20 million payrolls obviously
 2 didn't have the same level of skill that
 3 the 80 had. And if you go back and you
 4 read the commentary they called it the
 5 dead puck era; the clutching, and
 6 grabbing, and hooking and holding. I
 7 think, since you told me you were a
 8 hockey fan and you know all this, and so
 9 that was -- that lack of attractiveness
 10 of the overall product was a function of
 11 teams not being able to compete. We now
 12 have an environment where the league
 13 probably have never been stronger, in
 14 terms of its ownership, in terms of its
 15 revenues, in terms of its presence, in
 16 person or on media. And that is a
 17 function of all of the various pieces
 18 that have been put together. This being
 19 an important and essential element of it.
 20 Q. Now, is the revenue range
 21 defined by the salaries --
 22 A. Not the revenue range.
 23 Q. I -- I -- is -- is that range --
 24 A. What range?
 25 Q. Is the -- is the salary cap

213

1 revenue range intended to define what a
2 competitive payroll would be? If you're
3 at the bottom of the -- of the payroll
4 range, is that enough money for
5 representative and competitive payroll?
6 A. The --
7 MR. GOLDFEIN: Object to the
8 form of the question.
9 THE WITNESS: Well, actually,
10 you're missing -- you called it the
11 salary cap revenue range. But it's --
12 it's the cap range. The salary range is,
13 we believe, a band that is narrow enough
14 to have all teams have a chance to be
15 competitive, but wide enough to take into
16 account the disparity in teams. So for
17 example, if you are the Pittsburgh
18 Penguins and you have Evgeni Malkin, and
19 you have Sidney Crosby, and you have a
20 team that's won the cup and is vying for
21 the cup, your payroll is likely to be
22 higher than the Edmonton Oilers who have
23 three recent first-round draft picks who
24 are all developing and are all under
25 their rookie contracts. So having a

214

1 system where everybody has the same
2 payroll is not something that makes sense
3 because the composition of your team
4 skill level and age of the players, where
5 they are in their careers is something
6 needed to account for.
7 So you have to have a range
8 that's wide enough to account for those
9 differentials but close enough that all
10 teams have a chance of being competitive
11 despite where they are on their
12 evolution. Evolution not revolution.
13 BY MR. DIVER:
14 Q. Now, one other thing that Mr.
15 Daly says that is quoted is on the very
16 last page. It's the only line of text
17 above the bottom. He states: You don't
18 want a revenue-sharing program that
19 doesn't incentivize performance.
20 A. Yes.
21 Q. What does he mean by that --
22 A. What he's --
23 Q. -- what is -- what is the
24 concern?
25 A. What he's saying is we, we as

215

1 the league want to maximize our business.
2 We want to do it for the benefit of the
3 clubs, we want to do it for the benefit
4 of the players who share. We want to
5 maximize who we are and what we are for
6 the benefit of our fans and consumers.
7 And so you don't want to just
8 give somebody and all their -- you know,
9 there's accusations in other sports that
10 they revenue share and that the owners,
11 you know, go out, field a team, and the
12 owners pocket the money. And they don't
13 put in payroll and you don't have
14 competitive balance. We're looking for a
15 system where everybody's incentivized to
16 compete on the ice as hard as possible
17 and to make their businesses as strong as
18 possible.
19 Q. And now -- and how does this
20 system prevent to disincentivized the
21 kind of behavior you've described?
22 MR. GOLDFEIN: When are we
23 referring to?
24 MR. DIVER: I'm -- I'm talking
25 about today.

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1 MR. GOLDFEIN: This is about the
2 former collective-bargaining agreement.
3 MR. DIVER: But it's a general
4 statement.
5 MR. GOLDFEIN: No, I'm sorry.
6 It's a statement that was made in
7 reference to the former
8 collective-bargaining agreement.
9 MR. DIVER: Okay.
10 MR. GOLDFEIN: So timing --
11 timing here is an important issue.
12 THE WITNESS: Ask the question
13 again. I'll see if I can answer it.
14 BY MR. DIVER:
15 Q. Okay. How does the current
16 collective-bargaining agreement ensure
17 that clubs don't have incentives to
18 behavior as you have described teams in
19 our leagues doing, taking revenue-sharing
20 money and not investing it in the club?
21 A. Whether or not the system is the
22 system as we are currently using it, or
23 the one under the last CBA, which is
24 10,000 feet quite similar, by having the
25 minimum it -- it ensures that clubs are

217

1 spending a minimum level. The teams that
2 are getting revenue sharing are
3 ostensibly the clubs that are
4 revenue-challenged. So for them to be
5 able to afford the minimum or the quarter
6 point or the midpoint, they get help to
7 do that.

8 Q. Now, let -- let me ask you
9 looking at the article 49, and you may
10 know this well enough, on page 205, at
11 the top under the section entitled:
12 Redistribution -- Redistribution
13 Commitment.

14 A. Um-hmm, yes.

15 Q. Now, it defines a redistribution
16 amount that I understand to be 6.055
17 percent of league-wide hockey-related
18 revenue; is that correct?

19 A. Correct.

20 Q. Okay. And then there's a
21 proviso that says: That in no league
22 year shall the redistribution commitment
23 exceed the amount necessary to fund all
24 recipient clubs up to the midpoint of the
25 payroll range plus the pro rata benefits.

218

1 A. When -- when -- when you go
2 through the complicated formula,
3 theoretically if the team based on the
4 formally can afford the midpoint then you
5 don't have to use if there's extra money
6 left on the 6.055 percent, you don't have
7 to continue to redistribute it because
8 everybody based on the formula has enough
9 money to afford the midpoint, which is
10 midway between the minimum and the cap.

11 Q. But there will still be some
12 teams up at the cap and some teams who
13 will -- who will only be able to afford
14 the midpoint; is that correct?

15 A. No, you -- you -- no, you can
16 get revenue sharing even if you're at the
17 cap. This is a question of what you can
18 afford to pay based on the formulas you
19 have. So we don't penalize you for
20 spending more, you can't go over the cap,
21 but just because you get money enough on
22 the formula to take you to the midpoint
23 doesn't mean you're limited to spending
24 the midpoint. If you decide that, you
25 know, you want to invest in another

219

1 player and spent more, you want to write
2 a check because you think you may lose
3 money, whatever it is, you have the
4 ability to do that.

5 Q. But this would if -- if you went
6 past the midpoint, that would, would it
7 not, continue to equalize to some extent
8 the ability of the clubs to pay a
9 payroll?

10 A. Well, what you're -- what you're
11 suggesting, and the logical extension to
12 that is, we should just take all of our
13 revenues and divide them 30 ways. That's
14 not how it works for a whole host of
15 reasons, not the least of which is if you
16 operate a building in New York City, for
17 example, and you just transformed it at
18 considerable expense, and it happens to
19 have an event floor on the sixth level,
20 and you happen to have, I don't know, 25
21 or 30 unions, operating that building
22 probably a little bit more costly than
23 operating the building in south Florida,
24 where if there are no unions and the
25 costs are a lot less. So there's a

220

1 certain reality to where you're
2 operating, what investments you have to
3 make and what it costs you.

4 Q. But I -- I think I'm just trying
5 to ask a -- sort of a simple question.
6 There's -- there's a limit to the amount
7 of money you want to share with teams who
8 are doing well enough; is that what is
9 captured by this?

10 MR. GOLDFEIN: Objection to the
11 form of the question.

12 THE WITNESS: The -- if you read
13 all the language and you quoted some of
14 it, it talks in terms of having enough
15 money for teams to be competitive. And
16 at some point if -- if you have enough
17 money based on the formula that you can
18 afford the midpoint on your own, then
19 surely you should be competitive because
20 at that point maybe you're talking about
21 a \$10 million difference in payroll.
22 That's not going to be the determining
23 factor as whether or not you're
24 competitive.

25 BY MR. DIVER:

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1 Q. Okay. Now, on page 208, there
2 are a couple of descriptions and I want
3 to make sure I understand. In B at the
4 top it talks about clubs and DMAs with
5 less than three million households. And
6 then the sentence only recipient club that
7 is in a DMA with three million or more
8 households shall only be eligible to
9 receive 50 percent of a full-share
10 distribution?
11 A. Yes.
12 Q. Okay. And how does that work;
13 and -- and what's the purpose of that
14 restriction?
15 A. That was -- the purpose was to
16 give them 50 percent more than they were
17 getting. Because they were getting zero
18 under the last deal.
19 Q. And why were they getting zero
20 under the last deal?
21 A. Theory on some level was that if
22 you were in a certain market size you
23 shouldn't necessarily need the help. I
24 think with the benefit of the passage of
25 time, we concluded that on some level and

222

1 at some point those clubs may well be
2 eligible also.
3 Q. But you've determined to only
4 allow them to have 50 percent?
5 A. Well, they were getting zero, so
6 50 percent was a step along the road --
7 Q. But you could --
8 A. -- or direction.
9 Q. But you could have chosen 100
10 percent, right?
11 A. And we could've left it at zero.
12 And funny, between where you are and what
13 I just described, you get 50 percent.
14 Q. Is it the league's position that
15 it should have been 100 percent, was this
16 negotiated at some point?
17 A. It was -- well, when you say the
18 league's position it was the Board of
19 Governors that ultimately approved it.
20 And we talked about how the league works.
21 There are clubs -- some clubs who thought
22 the big -- the clubs in these markets
23 should get nothing. These clubs some of
24 them probably thought they should have
25 gotten a 100 percent. And as things

223

1 evolved, whether or not it's TV rules or
2 collective-bargaining agreements, this
3 seemed to be a logical progression and a
4 fair progression from where we were.
5 Q. And this is related, is it not,
6 to Mr. Daly's concern about incentivizing
7 performance?
8 A. It's a variety of factors --
9 MR. GOLDFEIN: Objection.
10 THE WITNESS: -- the fact is, if
11 you're in a large market you would hope
12 that your revenue from local media would
13 be strong enough to get you to a certain
14 position. What we have learned is that
15 is not always the case and so this is how
16 we moved it along the way.
17 BY MR. DIVER:
18 Q. Okay. Now, explain subsection
19 D, which is entitled: Revenue
20 Performance Standards and Effect on
21 Continued Eligibility to Receive Player
22 Compensation Cost Redistribution Funds.
23 A. Oh, that. Is -- is it not
24 obvious? What -- what this is about was,
25 again, another step in the evolution.

224

1 Under the old collective-bargaining
2 agreement we had what we called claw
3 backs. If you weren't increasing your
4 local -- if you weren't increasing your
5 local revenues at the same rate as the
6 league as a whole growing revenues, if
7 you didn't have attendance at a certain
8 level, the first couple of years didn't
9 matter. But then if you had it the first
10 year you got docked 25 percent of your
11 revenue sharing. This goes to the
12 discussion we had about incentivizing
13 teams to do more. If you didn't do it a
14 second year in a row it was 40 percent,
15 if you didn't do it a third year in a row
16 it was 50 percent.
17 What we ultimately concluded was
18 we -- we might have been taking away
19 money from the clubs that most needed.
20 So what we said is no more claw backs.
21 You get your full share, but after the
22 first two years if you don't have three
23 quarters of the league average in gate
24 receipts, then you were going to get what
25 we called adult supervision. We were

225

1 going to supervise what you're doing,
 2 look at your business plans, maybe get
 3 you some help. All in the attempt to
 4 help teams grow their revenues.
 5 Q. And --
 6 A. Didn't it say that, just the way
 7 I did?
 8 Q. Yeah. It's the adult
 9 supervision defined term.
 10 A. I am being flip with that, but I
 11 think it makes the point.
 12 Q. Yeah. And -- and -- and
 13 ultimately following the oversight, is it
 14 possible for a club to lose its
 15 eligibility for revenue sharing?
 16 A. If it's not -- in other words,
 17 if -- if we say you need to hire a senior
 18 vice president for ticketing, you know,
 19 whose got six years of experience and you
 20 refuse to do it then you are not doing
 21 those things then, yes, that's the carrot
 22 and the stick.
 23 Q. Again, to incentivize the
 24 performance of the clubs --
 25 A. Exactly.

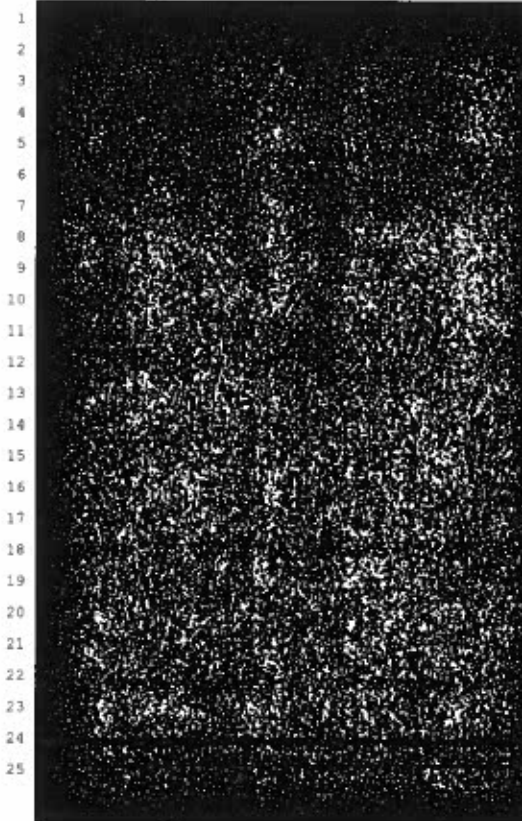
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1 Q. -- who are receiving --
 2 receiving the money? Okay.
 3 Now, the 6.055 percent, that --
 4 that percentage was determined as part of
 5 the collective-bargaining process; is
 6 that correct?
 7 A. Yes.
 8 -- --
 9 (Whereupon, Bettman-13, USA
 10 Today internet printout, was marked for
 11 identification.)
 12 -- --
 13 BY MR. DIVER:
 14 Q. If you liked to focus your
 15 attention on --
 16 A. You know, it's just -- it took
 17 me back to another place in time.
 18 Q. I'm sorry to bring you back to
 19 that time.
 20 A. It's okay. I've been there
 21 before.
 22 Q. Well, it was before the season
 23 started, so --
 24 A. Yes, yes.
 25 Q. -- not quite as dire.

227

1 A. It was -- it was getting there.
 2 MR. GOLDFEIN: What's the date
 3 of this one?
 4 THE WITNESS: It's August 23rd.
 5 MR. GOLDFEIN: Oh.
 6 BY MR. DIVER:
 7 Q. Now, I just want to focus on the
 8 paragraph four or five from the bottom
 9 that begins with the word Bettman?
 10 A. I know him.
 11 Q. Okay. In the last sentence of
 12 that you're discussing, I understand, the
 13 relative positions of the league and --
 14 and the player's association?
 15 A. Yes.
 16 Q. It says he pegged revenue
 17 sharing in the league's plan at 190
 18 million and the revenue sharing in the
 19 NHLPA plan of 240 million?
 20 A. Correct, I don't know if those
 21 -- I don't remember the NHLPA number but
 22 the 190 for us sounded right, and we
 23 ended at about 200 based on the revenues
 24 at the time.
 25 [REDACTED]

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229

1 Q. And you ended up successfully
 2 negotiating a number that was close to
 3 the position that -- that you offered
 4 here?

5 A. Well, sort of. Because we did a
 6 couple of -- we had something called the
 7 Industry Growth Fund which is another
 8 \$20 million a year which can be spent on
 9 discretionary problems that comes as
 10 revenue sharing so it really takes us
 11 closer and, again, the number goes up
 12 because as the revenues grow to 6.055
 13 grows --

14 Q. Right.

15 A. -- I think based on these
 16 numbers at this time it really wound up
 17 at about 220 million. So we wound up
 18 probably closer to what the union was
 19 demanding than people think at first
 20 blush.

21 Q. But in terms of the percent you
 22 were offering percentages and they were
 23 countering with a percentage: is --

24 A. Well, they were --

25 Q. -- that fair?

230

1 A. -- everybody was doing formulas
 2 and approaches and suggestions. And
 3 that's probably also how we came up with
 4 the industry growth fund which wasn't --
 5 that part was done on absolute dollars
 6 as opposed to percentage.

7 Q. But -- but it's -- but it's a
 8 little bit more generous than you thought
 9 was necessary for --

10 A. Well, we agreed to what we
 11 thought was sensible and fair.

12 Q. Okay.

13 A. We didn't -- listen, not
 14 everybody got everything they wanted
 15 easily. That's why we had a lockout.

16 MR. DIVER: Now, let me -- what
 17 time is it?

18 MR. LECHMAN: 2:34.

19 BY MR. DIVER:

20 Q. Now, I want to focus on -- I
 21 want to turn back to the territorial
 22 system. And your view is the system is
 23 necessary: is that correct?

24 A. You call it a territorial
 25 system. I'm -- I'm a little uneasy just

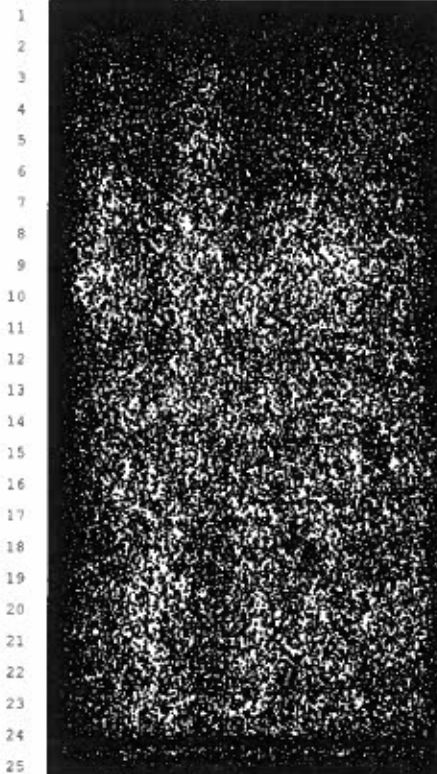
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1 agreeing to that characterization. The
 2 fact of the matter is we have structured
 3 our rules for distribution of our media
 4 through rules, through contracts, both
 5 locally and internationally in a way that
 6 we think has maximized both revenues and
 7 the output of our games to the greatest
 8 number of people.

9 Q. And to the extent that that
 10 system involves the television
 11 territories, do you think that that's
 12 necessary for that purpose?

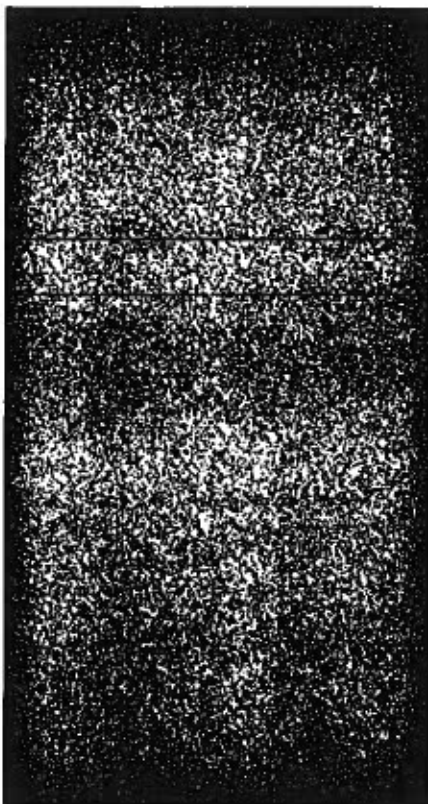
13 A. Absolutely.

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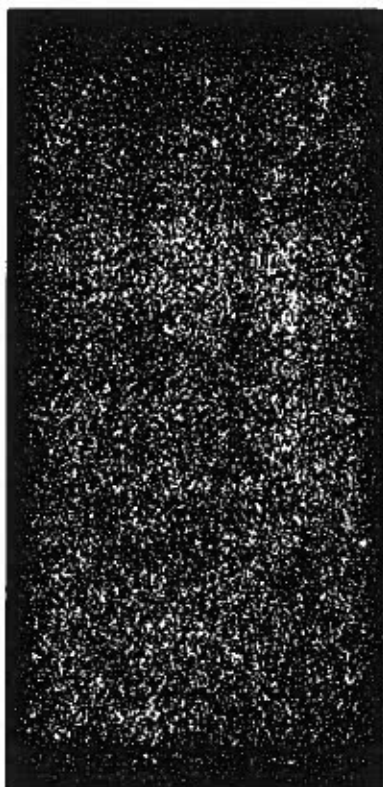
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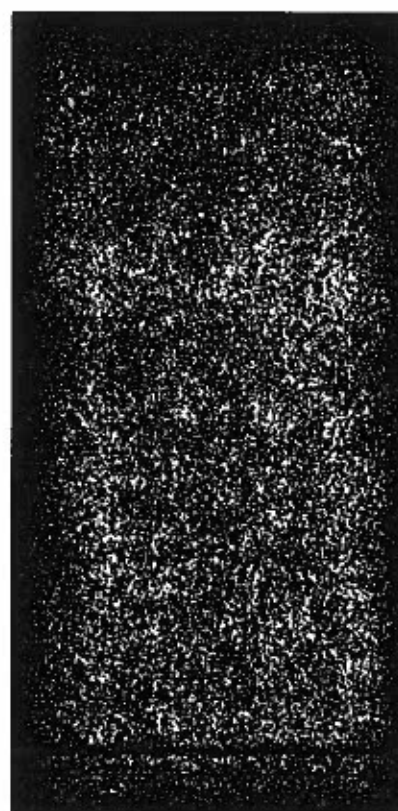
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237

1 and let everybody go everywhere it's
2 fine. But if everybody's going
3 everywhere else everybody else is coming
4 in. And that is going to drive the
5 weaker teams not only off the air but
6 probably out of business.

7 Q. Now, have you done any -- have
8 you hired any economists or done any
9 formal analysis that shows which teams
10 would be able to -- to obtain television
11 contracts in a competitive market?

12 A. I haven't but I assume my
13 lawyers will do it for purposes of this
14 litigation. But I gotta tell you, I've
15 only spent 32 years of my life in this
16 business and what I'm telling you is what
17 I believe from working in this business
18 for 32 years.

19 Q. Have you ever -- has the league
20 ever analyzed the territorial practices
21 of leagues in other countries to see
22 whether the results that you described
23 were obtained?

24 A. In our countries?

25 Q. Um-hmm.

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1 A. We went through a long
2 discussion earlier today, the country
3 north of us, at the 49th parallel, is the
4 longest undefended border in the world
5 has different TV practices than here.
6 What's going on in Europe I don't think
7 is particularly relevant to what we're
8 doing here. It's a different
9 marketplace.

10 Q. Now, you stated earlier that
11 demand for hockey programming rights by
12 broadcasters is at an all time high.
13 Does that affect this analysis?

14 A. My analysis? The fact that it's
15 at an all time high is because everything
16 I believe in is finally coming to
17 fruition.

18 Q. And -- and -- and -- and the
19 fact that live programming is especially
20 desirable and that television programmers
21 are demanding sports rights for that
22 purpose, does that affect the analysis?

23 A. Everything that's going on
24 affects my analysis.

25 Q. Are there any other reasons

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1 besides your contention that certain
2 teams would not be able to obtain
3 television contracts that make the
4 territorial system necessary?

5 A. You know, I've spent too much
6 time over the last 21 years dealing with
7 distressed franchises. I know which
8 franchises are strong and what makes them
9 strong, and I understand when franchises
10 struggle. If you're asking me do I
11 believe that the balance of how we
12 practice our media policy through our
13 rules and our contracts is essential to
14 the fact that we are where we are today,

15 

16 Q. But are there other reasons?

17 A. You're --


18 MR. GOLDFEIN: Object to the
19 form of the question.

20 THE WITNESS: I -- I don't
21 understand the question about other
22 reasons. We -- we've spent, I don't
23 know, four or five hours talking about

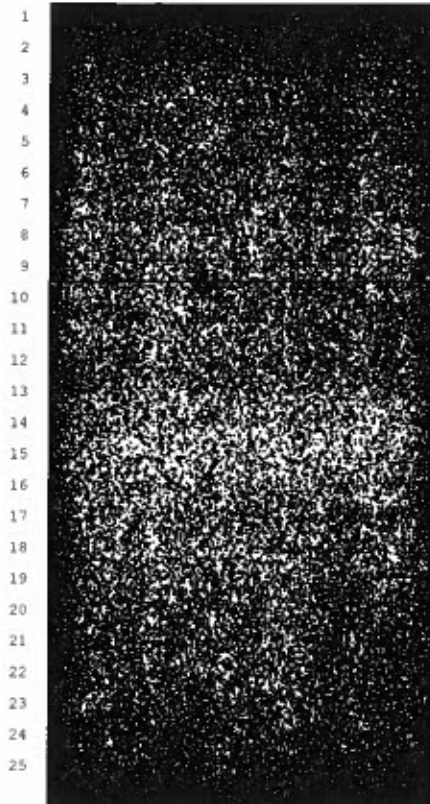
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1 all of the issues that affect. You --
2 you -- you like to point to one thing and
3 assume that that's the hot button.
4 They're a myriad of issue that go into
5 all of this, okay. And -- and I'm giving
6 you my analysis and ultimately the
7 business judgment of the board that I
8 work for as to why what we're doing is,
9 A, essential to the continued operation
10 of this league with 30 teams. And, B,
11 what we need to do to be effective
12 competitors in a very complex
13 entertainment marketplace.

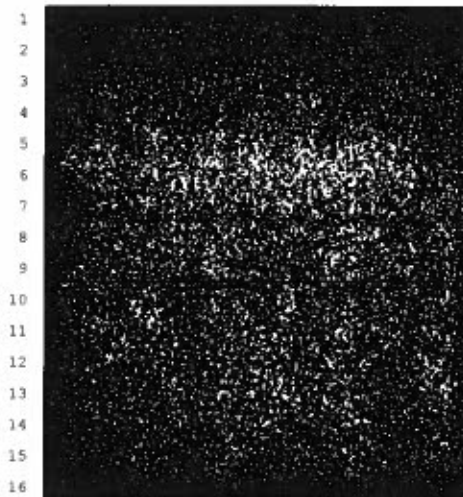
14 BY MR. DIVER:

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17 Q. Now, in -- in Tampa, a hockey
18 fan can actually watch a game involving a
19 team other than the Tampa Bay Lightning
20 most nights of the week: is that correct?
21 A. In a variety of forms certain
22 fans can do that. You can either get the
23 national package for the games that are
24 distributed, if you get the NHL Network
25 you are that level of fan. If you get an

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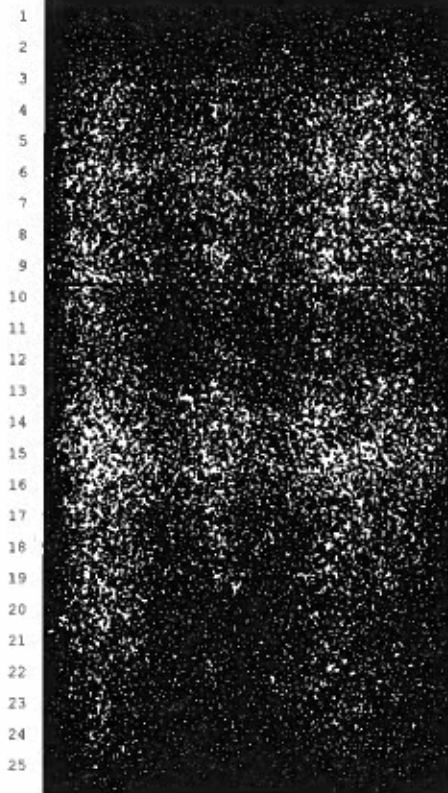
1 outer market package, you could do that
2 as well.
3 Q. And even without doing that, the
4 NBC Sports Network and NHL Network games,
5 they are more such games broadcast into
6 Tampa than there are Tampa Bay Lightning
7 games: is that fair?
8 MR. GOLDFEIN: Object to the
9 form of the question.
10 THE WITNESS: In -- in -- it's
11 -- they're available in certain formats,
12 yes. But the numbers, as -- as I'm sure
13 you know or will know, aren't as dramatic
14 as -- as basic cable or free TV.
15 BY MR. DIVER:
16 Q. But NBC Sports Network is on
17 expanded basic cable, correct?
18 A. It's -- I assume it's on basic
19 or expanded basic, but those are the
20 national games. And, again, that's the
21 balance. They're not an unlimited number
22 of games.
23 Q. And as you increased the number
24 of national games into Tampa and
25 elsewhere, has that driven down the

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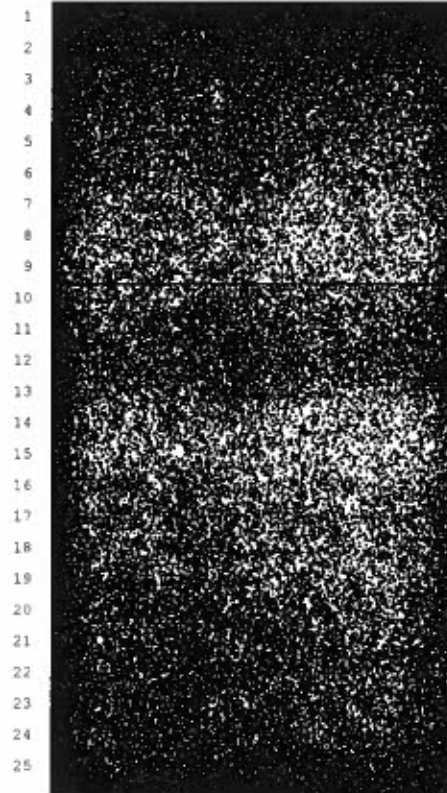
1 ability of Tampa to obtain local rights
2 agreements?
3 MR. GOLDFEIN: Object to the
4 form of the question; lacks foundation.
5 THE WITNESS: My own belief is
6 to the extent that we are making
7 ourselves as a league a stronger
8 property, [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] That helps raise the body for
12 everybody. But, again, it's a balancing
13 act and if you go too far over the edge
14 you not only jeopardize the national
15 presence and platforms, you jeopardize
16 the local as well.
17 BY MR. DIVER:



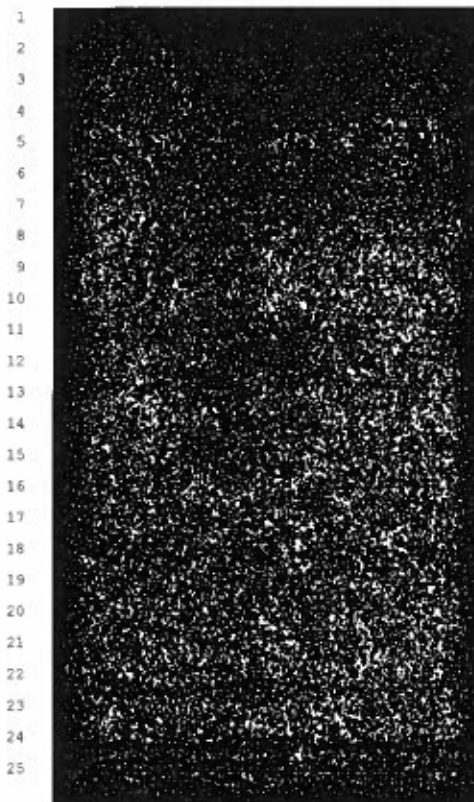
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8 Q. But when -- but when NBC
9 SportsNet and NHL Network come into Long
10 Island that does not drive fans away from
11 the Islanders?
12 A. It's limited -- a more limited
13 number.
14 Q. Because it's a more limited
15 number, okay.
16 A. It's a balance. It's about
17 striking the right balance. And for us,
18 the balance has never been better than
19 it is right now, which is why the game
20 both on the ice and off the ice is
21 probably the strongest it's ever been.
22 Q. Now, when you started as
23 commissioner, were there two few games of
24 outer market teams available on any given
25 market?

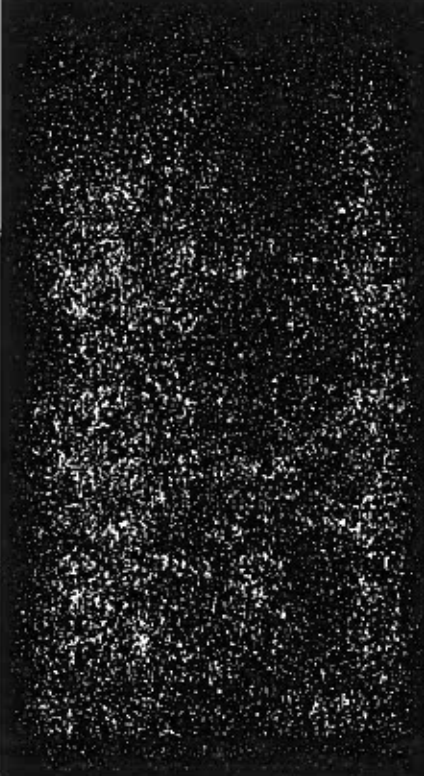
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1 A. I don't -- if there was an outer
2 market package it may -- it -- it had
3 just begun. We're going back to 1993.
4 Q. But on the ESPN site.
5 A. Oh, on ESPN. They were doing a
6 couple of games a week, but, again, they
7 were blacking out locally.
8 Q. And that was not the appropriate
9 balance between local broadcast and --
10 A. Considering we were getting, I
11 think \$10 or \$11 million a year and we
12 didn't have an over-the-air presence, I
13 don't think that was such a good balance.
14 Q. But -- but you struck the
15 correct balance you think now?
16 A. It's only taken 19 -- 17 years,
17 these things evolved.
18 Q. Now, let me -- now, as a matter
19 of fact, in terms of the number of games
20 that a fan can get in Tampa, the Tampa
21 fan can get nearly every game: is that
22 correct?
23 A. Some Tampa fans, depending on
24 what it is you're looking to subscribe
25 to.


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1 Q. Now, why does that not injure
2 the Tampa Bay Lightning?
3 A. Because you're having a select
4 group of fans make a decision as to what
5 they want. There's some number of
6 displaced fans who are willing to
7 subscribe to the package. But I think,
8 you know, maybe we have a quarter of a
9 million Center Ice subscribers in the
10 U.S., maybe we have 250, 275 GameCenter
11 Live. Again it's balances in terms of
12 the raw numbers.
13 Q. And why are fewer people
14 watching the games on GameCenter Live and
15 Center Ice than they would if the games
16 were brought in directly by the clubs to
17 Tampa?
18 MR. GOLDFEIN: Object to the
19 form of the question.
20 THE WITNESS: I also don't
21 understand the question. You're --
22 you're asking me as to why something
23 would happen that doesn't exist.
24 BY MR. DIVER:
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6 Q. Now, if Center Ice were
7 available more broadly on cable, that
8 would cause a problem?
9 A. You mean potentially it would
10 cause a problem. The -- the networks
11 know what we do, okay. All of the
12 leagues have outer market packages. If
13 the networks felt too threatened by the
14 outer market packages, they understand
15 what they are and how they work, then
16 they wouldn't want to have the packages
17 they have on a national basis. They
18 would either be nonexistent or less
19 valuable.
20 Q. Now, if you had given away
21 Center Ice for free last year as some
22 people had recommended, would that have
23 caused the problem that we are discussing
24 now?
25 A. I think it would have devalued

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1 the product. I think discounting it as a
2 we're back and we're sorry was enough,
3 but you don't -- you don't want to give
4 it away. You don't want, as we
5 discussed, you don't want to turn this
6 into the music industry.

7 Q. Would too many people be
8 watching too many other games in Tampa
9 and elsewhere if that had been the case?
10 A. But last year would have been an
11 aberration. In other words, you're --
12 you're -- you're asking me a question on
13 what happened on a season that wasn't
14 complete because there's a lockout and I
15 am trying to respond to you as a matter
16 of general policy as to what would happen
17 over time.

18 Q. If -- if -- if Center Ice were
19 to cost \$10 this year would that be
20 harmful to the ability of Tampa Bay, the
21 Islanders to get --

22 A. It -- it --

23 Q. -- television contracts?

24 A. Sure. If I go to iTunes and can
25 buy How I Met Your Mother for two bucks,

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1 why would I give away an NHL game for two
2 and a half hours for 20 cents? It makes
3 no sense. And so if you use that math,
4 if somebody wanted 82 games of a team on
5 Center Ice and they pay \$169, well let's
6 see, 82 games times two is 164 and in
7 addition we give you another 800 games
8 for nothing. I think in terms of
9 reaching out to our fans and giving them
10 great value we do an incredible job.

11 MR. DIVER: Let's take a
12 five-minute break.

13 THE VIDEOGRAPHER: 2:58, we are
14 off the record.

15 - - -

16 (Whereupon, a short break was
17 held off the record.)

18 - - -

19 THE VIDEOGRAPHER: The time is
20 3:06. We are back on the record.

21 MR. DIVER: Plaintiffs have no
22 more questions at this point.

23 MR. GOLDFEIN: We will take a
24 minute.

25 THE VIDEOGRAPHER: 3:06, off the

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1 record.

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3 (Whereupon, a discussion was
4 held off the record.)

5 - - -

6 THE VIDEOGRAPHER: 3:07, back on
7 the record.

8 MR. GOLDFEIN: We have no
9 questions.

10 Thank you.

11 MR. DIVER: Thank you.

12 THE VIDEOGRAPHER: The time is
13 3:07, we are off the record.

14 - - -

15 (Whereupon, the deposition
16 concluded at 3:07.)

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1 I, Nicole Alessi, Certified
2 Professional Reporter, certify that the
3 foregoing is a true and accurate
4 transcript of the trial transcript, held
5 before me at the time, place and on the
6 date herein before set forth.

7

8 I further certify that I am neither
9 attorney nor counsel for, not related to
10 or employed by, any of the parties to the
11 action in which this deposition was
12 taken; further, that I am not a relative
13 or employee of any attorney or counsel
14 employed in this case, nor am I
15 financially interested in this action.

16

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19 Nicole Alessi

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22 Certified Professional Reporter

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